

House Daily Reader

Tuesday, February 22, 2005

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State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

717L0081

SENATE TAXATION COMMITTEE ENGROSSED NO.

SB 2 - 01/26/2005

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Lintz, Greenfield, Hundstad, and Peterson (Jim) and Representatives Hargens, Deadrick, Fryslie, and Rhoden at the request of the Interim Committee on Property Assessment

1 FOR AN ACT ENTITLED, An Act to revise the procedure for assessing certain agricultural
2 property.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-6-33.25 be amended to read as follows:

5 10-6-33.25. For the purposes of § 10-6-33.24, the agricultural income value shall be
6 determined using capitalized annual cash rent. The annual cash rent is the annual cash rent,
7 excluding the per acre tax on agricultural land, determined through an analysis of arms-length
8 rental agreements collected within the county in the ~~year~~ three years prior to the year for which
9 the agricultural income value is being determined. The agricultural income value of cropland
10 shall be based on average rents over a three-year period for cropland under natural conditions.
11 The agricultural income value of noncropland shall be based on average rents over a three-year
12 period for noncropland under natural conditions. However, no arms-length rental agreements
13 for irrigated land may be used to determine the annual cash rent pursuant to this section. The
14 annual cash rent shall be capitalized at seven and three-fourths percent.



1 The secretary of revenue and regulation may enter into a contract for the collection of cash
2 rent information by county. Cash rent information shall be adjusted by soil survey statistics, if
3 available, and pursuant to section 2 of this Act.

4 Section 2. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The director of equalization shall annually determine the assessed value of agricultural land
7 as defined by § 10-6-31.3. Any agricultural land assessed based on its agricultural income value
8 pursuant to § 10-6-32.24 and 10-6-33.25 may be value adjusted by the following factors:

- 9 (1) The capacity of the land to produce agricultural products as defined in § 10-6-33.2;
10 and
11 (2) The location, size, soil survey statistics, terrain, and topographical condition of the
12 land including the climate, accessibility, and surface obstructions which can be
13 documented.

14 Section 3. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 If the median rent value per acre in an identifiable region within a county deviates by more
17 than ten percent from the county median rent value per acre, the county director of equalization
18 may establish a separate rent value per acre for the land defined by the director of equalization
19 within that identifiable region.

State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0337

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 25 - 02/02/2005

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to revise the purposes for which the extraordinary litigation
2 fund may be used.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 1-14-3.1 be amended to read as follows:

5 1-14-3.1. There is established in the state treasury the extraordinary litigation fund. The fund
6 shall be maintained separately and administered by the Bureau of Administration. The fund may
7 be used for plaintiff attorney fee awards, retention of outside counsel, settlement costs, or other
8 ~~extraordinary~~ litigation expenses not otherwise eligible to be paid under § 3-22-1. Unexpended
9 money and any interest that may be credited to the fund shall remain in the fund. The
10 extraordinary litigation fund is hereby continuously appropriated and shall be budgeted through
11 the informational budget process. The creation and funding of this fund does not constitute a
12 waiver of the state's sovereign immunity.



State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

400L0336

SENATE ENGROSSED NO. **SB 26** - 01/27/2005

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to provide monetary penalties for failure of tobacco
2 distributors and wholesalers to comply with certain cigarette regulations.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-50-80 be amended to read as follows:

5 10-50-80. No later than twenty days after the end of each calendar quarter, and more
6 frequently if so directed by the secretary, each distributor and wholesaler shall submit
7 information concerning each nonparticipating manufacturer as the secretary requires to facilitate
8 compliance with §§ 10-50-72 to 10-50-92, inclusive, including, a list by brand family of the
9 total number of cigarettes or, in the case of roll-your-own, the equivalent stick count, for which
10 the distributor or wholesaler affixed cigarette tax stamps or imprints to a cigarette package, or
11 otherwise paid the cigarette tax due during the previous calendar quarter. The distributor or
12 wholesaler shall maintain and make available to the secretary all invoices and documentation
13 of sales of all nonparticipating manufacturer cigarettes and any other information relied upon
14 in reporting to the secretary for a period of six years. The secretary may, in addition to any other
15 provision of law, impose and collect a monetary penalty in an amount not to exceed five



1 hundred dollars per day, for the failure of a distributor or wholesaler to timely or accurately
2 comply with this section. Any monetary penalty collected pursuant to this section shall be
3 deposited in the state general fund.

4 Section 2. That § 10-50-82 be amended to read as follows:

5 10-50-82. No distributor or wholesaler or other person may:

6 (1) Affix a South Dakota cigarette tax stamp or imprint to a package or other container
7 of cigarettes, or pay South Dakota cigarette tax on cigarettes of a tobacco product
8 manufacturer or brand family not included in the directory; or

9 (2) Sell or distribute, or acquire, hold, own, possess, transport, import, or cause to be
10 imported, cigarettes of a tobacco product manufacturer or brand family not included
11 in the directory that the distributor, wholesaler, or other person knows or should
12 know are intended for distribution or sale in this state.

13 The secretary may, in addition to any other provision of law, impose and collect a monetary
14 penalty in an amount not to exceed the greater of five hundred percent of the retail value of the
15 cigarettes or five thousand dollars for each violation of this section by a distributor or
16 wholesaler. Any monetary penalty collected pursuant to this section shall be deposited in the
17 state general fund.

State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0273

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 34** - 01/28/2005

Introduced by: The Committee on Appropriations at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to make an additional appropriation to construct a
2 thermophilic anaerobic manure digestion system for the South Dakota Agricultural
3 Experiment Station and to declare an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That section 2 of chapter 113 of the 2004 Session Laws be amended to read as
6 follows:

7 There is hereby appropriated ~~one million seven hundred fifty thousand dollars (\$1,750,000)~~
8 two million nine hundred fourteen thousand dollars (\$2,914,000) from federal funds awarded
9 to the South Dakota Agricultural Experiment Station for the purpose of constructing the facility
10 described in section 1 of this Act.

11 Section 2. Notwithstanding the provisions of § 13-51-2, no money from the state general
12 fund, student tuition fees, the educational facilities fund, nor any money appropriated for
13 statewide maintenance and repair, may be used to finance the maintenance and repair of the
14 facilities specified in this Act.

15 Section 3. Whereas, this Act is necessary for the support of the state government and its



- 1 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
- 2 full force and effect from and after its passage and approval.

State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

400L0343

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **SB 53** - 02/17/2005

Introduced by: The Committee on Commerce at the request of the Department of Revenue
and Regulation

1 FOR AN ACT ENTITLED, An Act to provide for adequate access to health care provider
2 networks.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any person, directly or indirectly, offering a plan or program providing a discount on the
7 fees of any provider of health care goods or services, that is not offered directly by a health
8 carrier as provided by this chapter, shall register in a format as prescribed by the director and
9 shall file reports and conduct business under the same standards as required of utilization review
10 organizations in accordance with provisions of §§ 58-17C-65 to 58-17C-66, inclusive. No health
11 carrier may offer or provide coverage through a person not registered but required to be
12 registered pursuant to this Act. Any plan or program that is registered pursuant to § 58-17C-20
13 is not required to maintain a separate registration pursuant to this Act. A plan or program of
14 discounted goods or services that is offered by a health carrier in conjunction with a health
15 benefit plan, as defined in §§ 58-18-42 and 58-17-66(9), or a medicare supplement policy as



1 defined in § 58-17A-1, is not required to be registered pursuant to this Act. A plan or program
2 offered by a health care provider as defined in § 34-12C-1 is not required to register pursuant
3 to this Act if the health care provider does not charge for the plan or program.

4 Section 2. That chapter 58-17C be amended by adding thereto a NEW SECTION as follows:

5 Any person subject to registration pursuant to section 1 of this Act shall prominently and
6 boldly disclose that the product is not insurance. Any advertisements or solicitations made by
7 such a person are subject to the provisions of §§ 58-33A-2 to 58-33A-4, inclusive, and §§ 58-
8 33A-7 to 58-33A-8, inclusive, and §§ 58-33A-10 to 58-33A-12, inclusive. Any administrative
9 rule promulgated pursuant to § 58-33A-7 does not apply to those registered pursuant to this Act
10 unless specifically referenced in the rule. If any such person fails to comply with these
11 provisions or the provisions of this Act, the director may take action in the same manner as
12 provided for by § 58-17C-67 and may revoke the registration. Any such action by the director
13 is subject to notice and hearing as provided by chapter 1-26 and § 58-4-7. A person acting as
14 an agent as defined in chapter 58-30 who sells, solicits, or negotiates a plan or program
15 containing insurance benefits shall meet the licensing and appointment requirements of that
16 chapter if such person is otherwise required to be licensed by chapter 58-30.

17 Section 3. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as
18 follows:

19 No person subject to registration pursuant to section 1 of this Act may receive personal
20 information, money, or other consideration for enrollment in a plan or program until the
21 consumer has signed a contract or agreement with the person and no later than at the time the
22 contract is signed, provides, at a minimum, the following information, disclosed in a clear and
23 conspicuous manner:

24 (1) The name, true address, telephone number, and website address of the registered

1 person who is responsible for customer service;

2 (2) A detailed description of the plan or program, including the goods and services
3 covered and all exemptions and discounts that apply to each category thereof;

4 (3) All costs associated with the plan or program, including any sign-up fee and any
5 recurring costs;

6 (4) An internet website that is updated regularly or a paper copy where the consumer can
7 access the names and addresses of all current participating providers in the
8 consumer's area;

9 (5) A statement of the consumer's right to return the plan or program within thirty days
10 of its delivery to the person or agent through whom it was purchased and to have all
11 costs of the plan or program, excluding a nominal process fee refunded if, after
12 examination of the plan or program, the purchaser is not satisfied with it for any
13 reason;

14 (6) A statement of the consumer's right to terminate the plan or program at any time by
15 providing written notice or other notice, the form to be used for the termination
16 notice, and the address where the notice is to be sent if different than the address
17 provided in subdivision (1); and

18 (7) Notice that the consumer is not obligated to make any further payments under the
19 plan or program, nor is the consumer entitled to any benefits under the plan or
20 program for any period of time after the last month for which payment has been
21 made.

22 The requirement that the contract or agreement be signed prior to any money or
23 consideration being obtained does not apply to a transaction in which payment by the consumer
24 is made by credit card or by means of a telephonic transaction so long as the disclosures

required by this section are provided to the consumer by way of postal mail, facsimile, or electronic mail within ten business days of the consumer's enrollment.

Section 4. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as follows:

Any plan or program offered by a person subject to registration pursuant to section 1 of this Act shall provide thirty days from the date of the signed consumer contract or agreement, thirty days from the receipt of the disclosures required by section 3 of this Act if the consumer purchased the plan or program over the telephone, or sixty days if payment is by automatic or electronic withdrawal from a bank account, in which the consumer may return the plan or program to the person or agent through whom it was purchased and have all costs of the plan or program, excluding a nominal processing fee as prescribed by the director by rules promulgated pursuant to chapter 1-26, refunded in full.

Section 5. That § 58-18-20 be amended to read as follows:

58-18-20. Any insurer authorized to write health insurance in this state ~~shall have the power to~~ may issue blanket health insurance. No such blanket policy or certificate may be issued or delivered, or coverage solicited, in this state unless a copy of the form thereof ~~shall have~~ has been filed in accordance with § 58-11-12. Every such blanket policy or certificate shall contain provisions, which in the opinion of the director, are at least as favorable to the policyholder and the individual insured as those set forth in §§ 58-18-21 to 58-18-27, inclusive.

Section 6. Any person subject to registration pursuant to section 1 of this Act shall maintain a surety bond in the amount of twenty thousand dollars issued by a surety company authorized to do business in this state, or establish and maintain a surety account in the amount of twenty thousand dollars at a federally insured bank, savings and loan association, or federal savings bank located in this state. Each surety bond and surety account is subject to the following:

- 1 (1) A copy of the bond or a statement identifying the depository, trustee, and account
2 number of the surety account, and thereafter proof of annual renewal of the bond or
3 maintenance of the surety account, shall be filed with the director of the Division of
4 Insurance;
- 5 (2) A surety account shall be maintained until two years after the date that the person
6 subject to registration pursuant to section 1 of this Act ceases operations in the state.
7 Funds from any surety account may not be released to the person subject to
8 registration pursuant to section 1 of this Act without the specific consent of the
9 attorney general;
- 10 (3) No surety on the bond of a person subject to registration pursuant to section 1 of this
11 Act may cancel such bond without giving written notice thereof to the secretary of
12 state. Whenever the secretary of state receives notice of a surety's intention to cancel
13 the bond of a person subject to registration pursuant to section 1 of this Act, the
14 secretary of state shall notify the affected person that, unless such person files another
15 twenty thousand dollar surety bond with the secretary of state or establishes a twenty
16 thousand dollar surety account on or before the cancellation date of such surety bond,
17 then such person subject to registration pursuant to section 1 of this Act is no longer
18 authorized to do business in this state;
- 19 (4) The bond or surety account shall be in favor of any person and the director of the
20 Division of Insurance for the benefit of any person who is damaged by any violation
21 of this Act, including any violation by the supplier or by any other person which
22 markets, promotes, advertises, or otherwise distributes a discount card on behalf of
23 the supplier. The bond shall cover any violation occurring during the time period
24 during which the bond is in effect; and

1 (5) Any person claiming against the bond or surety account for a violation of this Act
2 may maintain an action at law against the person subject to registration pursuant to
3 section 1 of this Act and against the surety or trustee of the surety account. The
4 aggregate liability of the surety or trustee of the surety account to all persons
5 damaged by violations of this Act may not exceed the amount of the surety bond or
6 account.

State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

400L0385

SENATE ENGROSSED NO. **SB 66** - 01/27/2005

Introduced by: The Committee on Education at the request of the Department of Education

1 FOR AN ACT ENTITLED, An Act to provide certain options to school boards in
2 reorganization, to increase the percentage of voters necessary to petition for school district
3 reorganization, and to declare an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 13-6-10 be amended to read as follows:

6 13-6-10. If the school board or the voters of two or more districts or parts of districts express
7 a desire to consolidate their respective districts to create a new entity; or the school board or the
8 voters of an existing district express a desire to divide the district to create one or more new
9 entities; or the school board or the voters of an existing district express a desire to dissolve and
10 be annexed to an existing district, the school board may by resolution, or shall, if presented by
11 a petition signed by ~~fifteen~~ the lesser of one thousand registered voters or twenty percent of the
12 registered voters residing in the district, based upon the total number of registered voters at the
13 last preceding general election, develop a plan to accomplish the desire expressed in the
14 resolution or contained in the petition. If more than one district is involved, their respective
15 school boards shall act jointly in the preparation of the plan. Within fifteen days after a petition
16 is filed as provided in this section, the school district shall acknowledge the receipt of the



1 petition in writing to the person who filed the petition. Within one hundred eighty days after the
2 petition was filed, the school board shall develop the plan required in this section and shall file
3 the plan as required in § 13-6-17. The Department of Education may grant two extensions of
4 the filing deadline, not to exceed ninety days each.

5 The school board shall call conferences and hold hearings to develop the plan. The school
6 board may employ a consultant. If the school boards involved in the creation of a plan initiated
7 by a petitioner cannot agree on a single plan within the time allowed in this section, the
8 Secretary of Education shall submit a plan to the voters of each affected school board within
9 ninety days.

10 Section 2. Whereas, this Act is necessary for the immediate preservation of the public peace,
11 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
12 effect from and after its passage and approval.

State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

569L0202

SENATE EDUCATION COMMITTEE ENGROSSED NO. **SB 72** - 01/27/2005

Introduced by: Senators Olson (Ed), Dempster, Duniphan, Knudson, McCracken, Moore, Peterson (Jim), and Sutton (Dan) and Representatives Dykstra, Dennert, Elliott, Haley, Halverson, Hennies, Hunt, McLaughlin, Murschel, Roberts, and Thompson

1 FOR AN ACT ENTITLED, An Act to include legal costs as allowable expenditures from the
2 special education fund.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-16-32 be amended to read as follows:

5 13-16-32. The South Dakota Board of Education may promulgate rules pursuant to chapter
6 1-26 to identify allowable expenditures from the special education fund. Legal costs incurred
7 by a school district as a direct result of providing special education or special education and
8 related services to a child for whom the district is financially responsible are allowable
9 expenditures. The allowable expenditures may include any legal costs incurred by the school
10 district in the referral, evaluation, and placement processes as well as any other legal expenses
11 for which the district is determined to be legally responsible to pay as a result of due process
12 hearings.

13 Section 2. That § 13-37-48 be repealed.

14 ~~13-37-48. Extraordinary expenses in §§ 13-37-39 and 13-37-40 include the following costs~~



1 ~~associated with any special education due process hearing; the appointment of a hearing officer;~~
2 ~~the hearing officer's preparation; conduct of the due process hearing; hearing officer's~~
3 ~~preparation of the decision; and providing a copy of the tape recording to the opposing parties.~~
4 ~~Notwithstanding any other provision of law or administrative rule, neither a school district's~~
5 ~~special education tax levy nor any other measure of a school district's finances may be~~
6 ~~considered factors by an oversight board and the secretary of the Department of Education when~~
7 ~~approving special education due process hearings costs as extraordinary expenses.~~

State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

812L0477

SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB 83** - 01/25/2005

Introduced by: Senators Kelly, Abdallah, Broderick, Dempster, Gant, Hundstad, McCracken, McNenny, Moore, and Olson (Ed) and Representatives Michels, Bradford, Cutler, Deadrick, Dykstra, Faehn, Frost, Garnos, Hargens, Hennies, Howie, Kraus, Krebs, McCoy, O'Brien, Rave, Rhoden, Sebert, Valandra, Weems, and Willadsen

1 FOR AN ACT ENTITLED, An Act to revise the seller's property condition disclosure
2 statement.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 43-4-44 be amended to read as follows:

5 43-4-44. The following form shall be used for the property condition disclosure statement:

6 SELLER'S PROPERTY CONDITION DISCLOSURE STATEMENT

7 (This disclosure shall be completed by the seller. This is a disclosure required by law. If you do
8 not understand this form, seek legal advice.)

9 Seller _____

10 Property Address _____

11 _____

12 This Disclosure Statement concerns the real property identified above situated in the City of

13 _____ County of _____, State of South Dakota.



1 THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE
2 DESCRIBED PROPERTY IN COMPLIANCE WITH § 43-4-38. IT IS NOT A WARRANTY
3 OF ANY KIND BY THE SELLER OR ANY AGENT REPRESENTING ANY PARTY IN
4 THIS TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR
5 WARRANTIES THE PARTIES MAY WISH TO OBTAIN. Seller hereby authorizes any agent
6 representing any party in this transaction to provide a copy of this statement to any person or
7 entity in connection with any actual or anticipated sale of the property.

8 ~~IF ANY MATERIAL FACT COMES TO THE ATTENTION OF THE SELLER WHICH~~
9 ~~WOULD AFFECT ANY STATEMENT MADE BY THE SELLER FOLLOWING THE~~
10 ~~SIGNING OF THIS STATEMENT AND BEFORE THE TIME OF SETTLEMENT, THE~~
11 ~~SELLER SHALL NOTIFY THE BUYER AND ANY AGENT REPRESENTING ANY~~
12 ~~PARTY TO THIS TRANSACTION IN WRITING OF SUCH MATERIAL FACT OR OTHER~~
13 ~~INFORMATION CHANGES BEFORE CONVEYANCE OF TITLE TO THIS PROPERTY,~~
14 THE SELLER MUST DISCLOSE SUCH MATERIAL FACT WITH A WRITTEN
15 AMENDMENT TO THIS DISCLOSURE STATEMENT.

16 I. LOT OR TITLE INFORMATION

17 1. When did you purchase or build the home? _____

18 If the answer is yes to any of the following, please explain under additional comments or on an
19 attached separate sheet.

20 2. Were there any title problems when you purchased the property?

21 Yes ____ No ____ ~~Unknown~~ ____

22 If yes, describe: _____

23 3. Are there any ~~unrecorded~~ or recorded liens or financial instruments against the property, other
24 than a first mortgage?

1 Yes ____ No ____ ~~Unknown ____~~

2 ~~If yes, explain: _____~~

3 4. Are there any unrecorded liens or financial instruments against the property, other than a first
4 mortgage?

5 Yes ____ No ____ Unknown ____

6 5. Are there any easements which have been granted in connection with the property (other than
7 normal utility easements for public water and sewer, gas and electric service, telephone service,
8 cable television service, drainage, and sidewalks)?

9 Yes ____ No ____ Unknown ____

10 ~~If yes, explain on separate page and attach hereto.~~

11 56. Are there any problems related to establishing the lot lines/boundaries?

12 Yes ____ No ____ Unknown ____

13 7. Do you have a location survey in your possession or a copy of the recorded plat? If yes, attach
14 a copy.

15 Yes ____ No ____ Unknown ____

16 ~~If yes, attach a copy of same.~~

17 68. Are you aware of any encroachments or shared features, from or on adjoining property (i.e.
18 fences, driveway, sheds, outbuildings, or other improvements)?

19 Yes ____ No ____

20 ~~If yes, explain: _____~~

21 79. Are you aware of any covenants or restrictions affecting the use of the property in
22 accordance with local law? If yes, attach a copy of the covenants and restrictions.

23 Yes ____ No ____

24 ~~If yes, attach a copy of the covenants and restrictions, if available.~~

1 ~~8~~10. Are you aware of any current or pending litigation, foreclosure, zoning, building code or
2 restrictive covenant violation notices, mechanic's liens, judgments, special assessments, zoning
3 changes, or changes that could affect your property?

4 Yes ____ No ____ ~~Unknown~~ ____

5 ~~If yes, explain:~~ _____

6 _____

7 ~~9~~11. Is the property currently occupied by the owner?

8 Yes ____ No ____

9 12. Does the property currently receive the owner occupied tax reduction pursuant to SDCL 32-

10 3-1?

11 Yes ____ No ____

12 13. Is the property currently part of a property tax freeze for any reason?

13 Yes ____ No ____ Unknown ____

14 ~~14. If no, is~~ Is the property leased?

15 Yes ____ No ____

16 ~~If yes, please attach a copy of any written lease or a statement as to the terms and conditions of~~
17 ~~the lease.~~

18 ~~10~~15. If leased, does the property use comply with local zoning laws, ~~if any~~?

19 Yes ____ No ____ ~~Unknown~~ ____

20 ~~11. Is there ground rent? Yes~~ ____ ~~No~~ ____ ~~Unknown~~ ____

21 ~~If so, what is the ground rent payment (i.e. annually, semi-annually, monthly)? \$~~ _____

22 ~~per~~ _____

23 16. Does this property or any portion of this property receive rent? If yes, how much \$ ____ and

24 how often ____?

24 If the answer is yes to any of the following, please explain under additional comments or on an

1 attached separate sheet.

2 1. ~~Have you experienced~~ Are you aware of any water penetration problems in the walls,
3 windows, doors, basement, or crawl space?

4 Yes ____ No ____ ~~Unknown~~ ____

5 2. What water damage related repairs, if any, have been made?

6 ~~If so~~ any, when? _____

7 ~~Is~~ 3. Are you aware if drain tile is installed on the property?

8 Yes ____ No ____ ~~Unknown~~ ____

9 ~~24. Are there~~ you aware of any interior cracked walls or floors, or cracks or defects in exterior
10 driveways, sidewalks, patios, or other hard surface areas?

11 Yes ____ No ____ ~~Unknown~~ ____

12 ~~If yes, explain:~~ What related repairs, if any, have been made?

13 _____

14 ~~35. Have you ever experienced~~ Are you aware of any roof leakage, past or present?

15 Yes ____ No ____ ~~Unknown~~ ____

16 Type of roof covering: _____

17 Age: _____

18 What roof repairs, if any, have been made, when and by whom?

19 _____

20 ~~If so, when?~~ _____

21 Describe any existing unrepaired damage to the roof: _____

22 ~~4. Have you received notice that fire retardant treated plywood may have been used during roof~~
23 ~~construction of the property?~~

24 ~~Yes~~ ____ ~~No~~ ____

1 ~~If yes, has an inspection of the roof been performed?~~

2 ~~Yes _____ No _____ Unknown _____~~

3 ~~If yes, explain results: _____~~

4 ~~56. Is there~~ Are you aware of insulation in:

5 the ceiling/attic? Yes _____ No _____ Unknown _____

6 the walls? Yes _____ No _____ Unknown _____

7 the floors? Yes _____ No _____ Unknown _____

8 ~~67. Are you aware of any termite or wood boring pest~~ infestation or damage, either past or
9 present?

10 Yes _____ No _____ Unknown _____

11 If yes, explain: _____

12 ~~Has~~ 8. Are you aware of the property having been treated for any ~~termite or wood boring pest~~
13 infestation or damage?

14 Yes _____ No _____ Unknown _____

15 If yes, who treated it and when? _____

16 ~~79. Have~~ Are you ~~performed~~ aware of any work upon the property ~~within the last five years~~
17 which required a building, plumbing, electrical, or any other permit?

18 Yes _____ No _____

19 If yes, describe the work: _____

20 Was a permit obtained? Yes _____ No _____

21 Was the work approved by an inspector? Yes _____ No _____

22 Explain: _____

23 ~~8. Has~~ 10. Are you aware of any past or present damage to the property, ~~structures, or~~
24 ~~improvements thereon ever been damaged?~~ (i.e. fire, smoke, wind, floods, hail, or snow)?

1 Yes ____ No ____ ~~Unknown ____~~

2 If yes, describe _____

3 Have any insurance claims been made?

4 Yes ____ No ____ Unknown ____

5 Was an insurance payment received?

6 Yes ____ No ____ Unknown ____

7 ~~If yes, has~~ Has the damage been repaired?

8 Yes ____ No ____

9 If yes, describe in detail: _____

10 _____

11 ~~9~~11. Are you aware of any problems with sewer blockage or backup, past or present?

12 Yes ____ No ____ ~~Unknown ____~~

13 III. SYSTEMS/UTILITIES INFORMATION

14 _____ ~~NONE/NOT~~ _____ ~~NOT~~ _____

15 _____ ~~INCLUDED WORKING WORKING UNKNOWN~~ _____

16 ~~A. ELECTRICAL SYSTEM~~

17 ~~Burglar Alarm and/or Security~~

18 ~~System~~

19 ~~Ceiling Fan~~

20 ~~Garage Wiring~~

21 ~~Garage Door/Opener Control(s)~~

22 ~~Doorbell~~

23 ~~Intercom~~

24 ~~Light Fixtures~~

- 1 ~~Sauna~~
- 2 ~~Smoke and/or Fire Alarm~~
- 3 ~~Switches & Outlets~~
- 4 ~~Vent Fan~~
- 5 ~~220 Volt Service~~
- 6 ~~B. HEATING AND COOLING SYSTEM~~
- 7 ~~Air Exchanger~~
- 8 ~~Attic Fan~~
- 9 ~~Air Purifier~~
- 10 ~~Central Air -- Electric~~
- 11 ~~Central Air -- Water Cooled~~
- 12 ~~Fireplace~~
- 13 ~~Fireplace Insert~~
- 14 ~~Furnace/Heat -- Electric or Gas~~
- 15 ~~Humidifier~~
- 16 ~~Propane Tank -- Leased or Owned~~
- 17 ~~Solar House -- Heating~~
- 18 ~~Woodburning Stove~~
- 19 ~~C. WATER/SEWER SYSTEMS~~
- 20 ~~Cistern~~
- 21 ~~Hot Tub, Whirlpool, and Controls~~
- 22 ~~Plumbing and Fixtures~~
- 23 ~~Pool & Equipment~~
- 24 ~~Septic/Leaching Field~~

- 1 ~~Sump Pump~~
- 2 ~~Underground Sprinkler & Heads~~
- 3 ~~Water Heater -- Electric or Gas~~
- 4 ~~Water Purifier~~
- 5 ~~Water Softener -- Leased or Owned~~
- 6 ~~Well & Pump~~
- 7 ~~Sewer Systems/Drains~~

	<u>NONE/NOT</u>		<u>NOT</u>
	<u>INCLUDED</u>	<u>WORKING</u>	<u>WORKING</u>
10 <u>1. 220 Volt Service</u>	_____	_____	_____
11 <u>2. Air Exchanger</u>	_____	_____	_____
12 <u>3. Air Purifier</u>	_____	_____	_____
13 <u>4. Attic Fan</u>	_____	_____	_____
14 <u>5. Burglar Alarm and Security System</u>	_____	_____	_____
15 <u>6. Ceiling Fan</u>	_____	_____	_____
16 <u>7. Central Air - Electric</u>	_____	_____	_____
17 <u>8. Central Air - Water Cooled</u>	_____	_____	_____
18 <u>9. Cistern</u>	_____	_____	_____
19 <u>10. Dishwasher</u>	_____	_____	_____
20 <u>11. Disposal</u>	_____	_____	_____
21 <u>12. Doorbell</u>	_____	_____	_____
22 <u>13. Fireplace</u>	_____	_____	_____
23 <u>14. Fireplace Insert</u>	_____	_____	_____
24 <u>15. Garage Door/Opener Control(s)</u>	_____	_____	_____
25 <u>16. Garage Wiring</u>	_____	_____	_____
26 <u>17. Heating System</u>	_____	_____	_____
27 <u>18. Hot Tub, Whirlpool, and Controls</u>	_____	_____	_____

- ~~DIV. HAZARDOUS CONDITIONS~~

~~Are there any existing hazardous conditions of the property such as methane gas, lead paint,~~

~~radon gas in the house or well, radioactive material, a landfill mineshaft, expansive soil, toxic~~

~~materials, ureaformaldehyde foam insulation, asbestos insulation, or buried fuel or chemical~~

~~storage tanks?~~

~~Yes _____ No _____ Unknown _____~~

1 Have any tests been performed? Yes _____ No _____ Unknown _____

2 Explain: _____

3 Are you aware of any existing hazardous conditions of the property and are you aware of any
4 tests having been performed?

5 EXISTING CONDITIONS TESTS PERFORMED

	<u>YES</u>	<u>NO</u>	<u>YES</u>	<u>NO</u>
6				
7 <u>1. Methane Gas</u>	_____	_____	_____	_____
8 <u>2. Lead Paint</u>	_____	_____	_____	_____
9 <u>3. Radon Gas (House)</u>	_____	_____	_____	_____
10 <u>4. Radon Gas (Well)</u>	_____	_____	_____	_____
11 <u>5. Radioactive Materials</u>	_____	_____	_____	_____
12 <u>6. Landfill, Mineshaft</u>	_____	_____	_____	_____
13 <u>7. Expansive Soil</u>	_____	_____	_____	_____
14 <u>8. Mold</u>	_____	_____	_____	_____
15 <u>9. Toxic Materials</u>	_____	_____	_____	_____
16 <u>10. Urea Formaldehyde Foam Insulations</u>	_____	_____	_____	_____
17 <u>11. Asbestos Insulation</u>	_____	_____	_____	_____
18 <u>12. Buried Fuel Tanks</u>	_____	_____	_____	_____
19 <u>13. Chemical Storage Tanks</u>	_____	_____	_____	_____
20 <u>14. Fire Retardant Treated Plywood</u>	_____	_____	_____	_____
21 <u>15. Production of Methamphetamines</u>	_____	_____	_____	_____

22 If the answer is yes to any of the questions above, please explain in additional comments or on
23 an attached separate sheet.

24 ~~IV~~ V. MISCELLANEOUS INFORMATION

25 1. Is the street or road located at the end of the driveway to the property public or private?

26 Public _____ Private _____ Unknown _____

27 2. If private, is there a written road maintenance agreement?

1 If yes, attach a copy of the maintenance agreement.

2 Yes ____ No ____ ~~Unknown ____~~

3 ~~If yes, attach a copy of the maintenance agreement, if available.~~

4 ~~2. Is this property located in or near a flood plain?~~

5 ~~Yes ____ No ____ Unknown ____~~

6 3. When was the fireplace/wood stove/chimney flue last cleaned?

7 ~~Date: _____~~

8 4. ~~In~~ Within the previous twelve months prior to ~~the date of~~ signing this document, ~~did~~ are you
9 aware of any of the following ~~occur~~ occurring on the subject property:?

10 _____ YES NO UNKNOWN

11 ~~a. A human death by homicide~~ _____

12 ~~b. Other felony committed against the~~

13 ~~property or a person on the property~~ _____

14 ~~If yes to any of the above explain:~~

15 _____

16 a. A human death by homicide or suicide? If yes, explain:

17 _____

18 Yes ____ No ____

19 b. Other felony committed against the property or a person on the property? If yes, explain:

20 _____

21 Yes ____ No ____

22 5. ~~Are the improvements connected to a~~ Is the water source public or private ~~water system~~
23 (select one)?

24 6. If private, what is the date and result of the last water test?

1 _____

2 7. ~~Are the improvements connected to a public or private~~ Is the sewer system public or
3 private (select one)?

4 _____

5 8. If private, what is the date of the last time the septic tank was pumped? _____

6 89. Are there broken window panes or seals?

7 Yes ____ No ____ ~~Unknown~~ ____

8 If ~~so~~ yes, specify: _____

9 910. Are there any items attached to the property that will not be left, such as: towel bars,
10 mirrors, swag lamps and hooks, curtain rods, window coverings, light fixtures, clothes lines,
11 swing sets, storage sheds, ceiling fans, basketball hoops, mail boxes, etc.

12 Yes ____ No ____

13 If yes, please list _____

14 1011. ~~Are there~~ Are you aware of any other material facts or problems that have not been disclosed
15 ~~above~~ on this form?

16 Yes ____ No ____

17 If yes, explain: _____

18 VI. ADDITIONAL COMMENTS (ATTACH ADDITIONAL PAGES IF NECESSARY)

19 _____

20 _____

21 CLOSING SECTION

22 The Seller hereby certifies that the information contained herein is true and correct to the best
23 of the Seller's information, knowledge, and belief as of the date of the Seller's signature below.

24 If any of these conditions change before conveyance of title to this property, the change will be

1 disclosed in a written amendment to this disclosure statement.

2 SELLER _____ DATE _____

3 SELLER _____ DATE _____

4 THE SELLER AND THE BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE
5 AND INSPECTIONS OF THE PROPERTY TO OBTAIN A TRUE REPORT AS TO THE
6 CONDITION OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS
7 IN ANY CONTRACT OF SALE AS NEGOTIATED BETWEEN THE SELLER AND THE
8 BUYER WITH RESPECT TO SUCH PROFESSIONAL ADVICE AND INSPECTIONS.

9 I/We acknowledge receipt of a copy of this statement on the date appearing beside my/our
10 signature(s) below. Any agent representing any party to this transaction makes no
11 representations and is not responsible for any conditions existing in the property.

12 BUYER _____ DATE _____

13 BUYER _____ DATE _____

14 Section 2. That § 43-4-45 be repealed.

15 ~~— 43-4-45. In any selling of a residential premises, any seller who has actual knowledge of the~~
16 ~~existence of any prior manufacturing of methamphetamines on the premises shall disclose that~~
17 ~~information to any purchaser or any person who may become a purchaser.~~

18 Section 3. That § 36-21A-89.1 be repealed.

19 ~~— 36-21A-89.1. The commission shall develop a disclosure form, to be filled out by the seller,~~
20 ~~regarding a purchaser's knowledge of the existence of any prior manufacturing of~~
21 ~~methamphetamines.~~

State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

563L0511

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 95** - 02/18/2005

Introduced by: Senators Sutton (Duane), Abdallah, Broderick, Gray, Hundstad, Koetzle, McNenny, Moore, and Napoli and Representatives Frost, Cutler, Dennert, Elliott, Jensen, Klaudt, Michels, Murschel, O'Brien, Olson (Ryan), Pederson (Gordon), Rounds, Turbiville, and Valandra

1 FOR AN ACT ENTITLED, An Act to authorize account wagering and multi-jurisdictional
2 simulcasting and interactive wagering totalizator hubs and to revise certain provisions
3 regarding pari-mutuel racing.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 42-7-56 be amended to read as follows:

6 42-7-56. The commission shall:

- 7 (1) Provide for racing under the certificate system;
- 8 (2) Perform quasi-legislative, quasi-judicial, and advisory functions excluding special
9 budgetary functions as defined in § 1-32-1;
- 10 (3) Set racing dates;
- 11 (4) Promulgate rules pursuant to chapter 1-26 for effectively preventing the use of any
12 substance, compound items, or combination thereof of any medicine, narcotic,
13 stimulant, depressant, or anesthetic which could alter the normal performance of a
14 racing animal unless specifically authorized by the commission;



- 1 (5) Supervise and check the making of pari-mutuel pools, pari-mutuel machines, and
2 equipment used within the state;
- 3 (6) Promulgate rules pursuant to chapter 1-26 governing, restricting, or regulating bids
4 on licensees' concessions and leases on equipment;
- 5 (7) Approve all proposed extensions, additions, or improvements to the buildings,
6 stables, or tracts upon property owned or leased by a licensee;
- 7 (8) Exclude from race courses or other pari-mutuel facilities any person who violates the
8 racing laws or any rule, ~~regulation~~, or order of the commission or is not eligible for
9 licensing in another racing jurisdiction;
- 10 (9) Compel the production of all documents showing the receipts and disbursements of
11 any licensee and determine the manner in which ~~such~~ the financial records shall be
12 kept;
- 13 (10) Investigate the operations of any licensee and cause the various places where the
14 certificate system is operated to be visited and inspected at reasonable intervals for
15 the purpose of satisfying itself that the rules ~~and regulations~~ are strictly complied
16 with;
- 17 (11) Request appropriate state officials to perform inspections necessary for the health and
18 safety of spectators, employees, participants, and animals that are lawfully on the race
19 track;
- 20 (12) License all participants in the racing industry and require and obtain such information
21 as the commission deems necessary from licensed applicants;
- 22 (13) Promulgate and enforce additional rules pursuant to chapter 1-26, and conditions
23 under which all horse and dog races held shall be conducted and promulgate rules
24 pursuant to chapter 1-26 to preserve the integrity and security of racing; ~~and~~

(14) License all facilities at which money is collected or disbursed under the certificate system;

(15) Promulgate rules pursuant to chapter 1-26 for the authorization, regulation, and auditing of account wagering on horse and dog racing authorized by this chapter;

(16) Promulgate rules pursuant to chapter 1-26 regarding the licensing and regulation of multi-jurisdictional totalizator hubs and the employees of such facilities; and

(17) Promulgate rules pursuant to chapter 1-26 to establish application fees and initial system audit fees that shall be used to conduct the background investigation of the applicant and the initial system audit of the multi-jurisdictional totalizator hub. If the commission or the executive secretary determines that the actual cost of the background investigation or initial system audit will exceed the amount of the fees paid, the commission may assess the actual cost of the background investigation or initial system audit, including the costs for personnel and travel, against the applicant.

Section 2. That § 42-7-58.7 be amended to read as follows:

42-7-58.7. Notwithstanding any other provisions of this chapter, the commission may accept and consider applications at any time for operation of satellite facilities and multi-jurisdictional totalizator hubs to be operated under the certificate system and issue a license at any time for the operation of ~~satellite~~ the facilities or hubs, if the facilities or hubs only allow wagering on horse and dog racing authorized by this chapter.

Section 3. That § 42-7-60 be amended to read as follows:

42-7-60. Every person applying for a license under §§ 42-7-58 ~~and~~, 42-7-58.1, and 42-7-56(16) shall give bond payable to the State of South Dakota with good security to be approved by the commission. The bond shall be the amount which the commission determines is adequate to protect the amount normally due and owing to the commission in a sixty-day period or, in the

case of new or altered conditions, based on the projected revenues and to guarantee proper
payout of wagers.

The commission may waive the bond. In such event, the amount of taxes and fees due and
owing the state shall be a lien on the license to operate. The lack of timely payment shall be
cause for revocation or suspension of the license to operate.

Section 4. That § 42-7-65 be amended to read as follows:

42-7-65. All transfers of licenses to ~~operate a meet~~ collect or disburse money under the
certificate system or transfers of stock in a corporation holding a license shall be subject to prior
review and approval by the commission, and the disclosure requirements as provided in § 42-7-
59. The commission may approve minor transfers of stock without a hearing. The commission
shall apply the standards provided in § 42-7-91 in determining whether it shall permit a transfer
of stock.

Section 5. That § 42-7-71 be amended to read as follows:

42-7-71. One-fourth of all money received by the state treasurer under this chapter from
licensees operating horse racing tracks shall be placed in a special revenue fund to be known
as the "South Dakota-bred racing fund." The fund shall be used by the commission to encourage
horse racing and the raising and breeding of horses in South Dakota and shall be used for the
purpose of providing compensation to South Dakota-bred horses ~~by~~ and providing funds to all
horsetracks licensed in South Dakota. ~~However, not more than one-fourth of the moneys~~
~~deposited in the South Dakota-bred racing fund may be used by the commission to provide~~
~~purse supplements to horsetracks for horses other than South Dakota-bred horses.~~

Section 6. That § 42-7-82 be amended to read as follows:

42-7-82. Claims for any part of a redistribution from a pari-mutuel pool shall be made within
~~sixty days~~ one year from the ~~end of the meet at~~ date on which the race was held or be forever

1 barred. Any sums so barred shall become the property of the licensee conducting the meet or
2 providing the simulcast signal from the host track to the satellite facility or the multi-
3 jurisdictional totalizator hub at which the contribution was made.

4 Section 7. That § 42-7-89 be amended to read as follows:

5 42-7-89. The payments required in §§ 42-7-63, 42-7-79, 42-7-85, ~~and~~ 42-7-88, and 42-7-102
6 to be made by the licensee to the state treasurer are in lieu of all other or further excise or
7 occupational taxes to the state or any county, municipality, or other political subdivision.

8 Section 8. That § 42-7-91 be amended to read as follows:

9 42-7-91. The commission may refuse, suspend, or withdraw licenses under the certificate
10 system and privileges granted by it or terminate ~~racing license~~ privileges for just cause. Those
11 things constituting just cause are:

- 12 (1) Any action or attempted action by a person contrary to the provisions of this chapter
13 and law;
- 14 (2) Corrupt practices, which include but are not limited to:
 - 15 (a) Prearranging or attempting to prearrange the order of finish of a race;
 - 16 (b) Failing to properly pay the winnings to a bettor or to properly return change
17 to a bettor upon purchasing a ticket;
 - 18 (c) Falsifying or manipulating the odds on any entrant in a race;
- 19 (3) Any violation of the rules of racing adopted by the commission;
- 20 (4) ~~Willful falsification~~ Falsification or misstatement of fact in an application for ~~racing~~
21 ~~privileges~~ any license issued pursuant to this chapter;
- 22 (5) Material false statement to a racing official or to the commission;
- 23 (6) Willful disobedience of a commission order or of a lawful order of a racing official
24 other than a commissioner;

(7) Continued failure or inability to meet financial obligations connected with the licensee's business, occupation or profession performed or engaged on the track grounds;

(8) Failure or inability to maintain properly a race track;

(9) The refusal to license, or the suspension, or the revocation of a racing license by another racing jurisdiction.

Section 9. That § 42-7-102 be amended to read as follows:

42-7-102. Notwithstanding any other provision of this chapter, the commission may authorize any licensee to participate in an interstate combined wagering pool with one or more other racing jurisdictions. If a licensee participates in an interstate combined wagering pool, the licensee may adopt the take-out of the host jurisdiction or facility. The State of South Dakota shall receive one and one-half percent of the total contributed in this state, and the special racing revolving fund and the South Dakota-bred racing fund shall each receive one and one-half percent of the total contributed in this state. However, if the licensee participating in the interstate combined wagering pool is a multi-jurisdictional totalizator hub, the total portion to be received by the state shall be one-fourth of one percent of the total contributed through the hub, of which the special racing revolving fund shall receive one-fifth of one percent of the total contributed through the hub and the South Dakota-bred racing fund shall receive one-twentieth of one percent of the total contributed through the hub. Any such interstate combined wagering pool may only apply to horse and dog racing authorized by this chapter.

Section 10. Nothing in this Act authorizes internet gambling otherwise prohibited by chapter 22-25A.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

690L0525

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 96** - 01/26/2005

Introduced by: Senators Duenwald and Nesselhuf and Representatives Schafer, Boomgarden,
Davis, Hackl, and Kroger

1 FOR AN ACT ENTITLED, An Act to allow municipalities to offer full food services at certain
2 licensed municipal facilities and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 35-4 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any municipality holding a license pursuant to Title 35 may serve or provide for the service
7 of food at any establishment operating under such license.

8 Section 2. Whereas, this Act is necessary for the support of the state government and its
9 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
10 full force and effect from and after its passage and approval.



State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

475L0485

SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. **SB 117** - 02/01/2005

Introduced by: Senators McNenny, Hansen (Tom), Hundstad, Kloucek, and Lintz and
Representatives Jensen, Brunner, Davis, Dykstra, Fryslie, Olson (Ryan),
Pederson (Gordon), and Tidemann

1 FOR AN ACT ENTITLED, An Act to provide for the development and implementation of
2 certain animal identification programs to maintain animal health and ensure the safety of the
3 food supply.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That chapter 40-3 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The Animal Industry Board may develop and implement specific programs for the
8 identification of animals and premises involved in animal movements. Any program
9 implemented pursuant to this Act shall provide for confidentiality of identification records other
10 than those records requested by law enforcement officers of the state and those records used for
11 mandatory disease control or eradication efforts.

12 Any identification program implemented pursuant to this Act shall be for the sole purpose
13 of maintaining animal health and ensuring the safety of the food supply.

14 Section 2. That chapter 40-3 be amended by adding thereto a NEW SECTION to read as



1 follows:

2 The Animal Industry Board may not develop and implement any identification program that
3 conflicts with or supercedes any provision of the state brand laws.

4 Section 3. That chapter 40-3 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The Animal Industry Board shall promulgate rules pursuant to chapter 1-26 for the
7 implementation of identification programs concerning:

- 8 (1) Descriptions of the systems used to implement identification programs;
- 9 (2) Methods and procedures to foster cooperation with industry, other states, and the
10 federal government in implementing identification programs;
- 11 (3) Definitions to be used in identification programs;
- 12 (4) Types of identification approved in identification programs;
- 13 (5) Methods for tracking movements of animals included in identification programs;
- 14 (6) Penalties for intentional removal of official identification devices from animals
15 within the state or from animals imported into the state;
- 16 (7) Confidentiality of identification records other than those used for mandatory disease
17 control and eradication programs;
- 18 (8) Types and species of animals included in identification programs; and
- 19 (9) Criteria for defining programs as voluntary or mandatory.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

637L0292

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 151** - 02/07/2005

Introduced by: Senators Hanson (Gary), Abdallah, Broderick, Duenwald, Gant, Greenfield, Hundstad, Koskan, Lintz, Moore, Peterson (Jim), and Sutton (Dan) and Representatives Sigdestad, Dennert, Dykstra, Garnos, Glover, Halverson, Hargens, Hennies, Klaudt, Rhoden, Thompson, and Valandra

1 FOR AN ACT ENTITLED, An Act to permit the cremation and inurnment of indigents in lieu
2 of burial and to revise and clarify certain provisions regarding indigent funeral expenses.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 28-17-1 be amended to read as follows:

5 28-17-1. If any person ~~shall die~~ dies within any county, who ~~shall~~ does not have the money
6 or means necessary to defray ~~his~~ the funeral expenses, and whose relatives or friends are unable
7 or unwilling to defray the ~~same~~, ~~it shall be the duty of~~ funeral expenses, the county
8 commissioners ~~to~~ shall employ a person to provide for and superintend the burial or cremation
9 and inurnment of such deceased person. However, if the board of county commissioners adopts
10 a general policy of cremation, the board shall, nevertheless, provide for burial if the next of kin
11 of the indigent decedent makes an objection to cremation within seventy-two hours.

12 Section 2. That § 28-17-2 be amended to read as follows:

13 28-17-2. Whenever any ~~person who is destitute and has no estate shall die~~ destitute person
14 dies within the state, and ~~who has~~ no one is legally bound for the funeral expenses, and ~~where~~



1 there is no other source to pay the cost of burial ~~expense, cremation, or inurnment~~, the funeral
2 expenses shall ~~then~~ be borne by the county in which the deceased was a resident at time of
3 death, ~~and if~~. If no residence can be fixed, then by the county in which death occurred shall bear
4 the funeral expenses.

5 Section 3. That § 28-17-3 be amended to read as follows:

6 28-17-3. The selection of a funeral director shall be made by the next of kin, if any,
7 otherwise by the county commissioner in whose district the death occurred. In no case ~~shall~~ may
8 the county commissioners advertise for bids on burial of indigent poor. However, in the case
9 of selection of a funeral director by the next of kin, the county is not bound to bear any unusual,
10 extraordinary, or unnecessary funeral expense.

11 Section 4. That § 28-17-4 be amended to read as follows:

12 28-17-4. On county burials, the funeral director in charge shall furnish casket and outside
13 container or, in the case of cremation, urn and conduct the funeral services in customary form;
14 ~~and the~~. The county shall allow the funeral director for merchandise and such services rendered,
15 a sum to be established by resolution of the board of county commissioners in such county at
16 their organizational meeting.

17 Section 5. That § 28-17-5 be amended to read as follows:

18 28-17-5. In addition to the burial expenses provided in § 28-17-4, the county commissioners
19 may contract with cemeteries within the state for burial space in a cemetery and the opening and
20 closing of the grave or may contract for an appropriate disposition of the cremated remains.

21 Section 6. That § 28-17-6 be amended to read as follows:

22 28-17-6. The necessary and reasonable expenses of burial under this chapter shall be paid
23 by the county treasurer, upon the order of such commissioners; ~~and if~~. If the decedent ~~shall have~~
24 had an established residency according to § 28-13-3 in a county in this state different from that

1 in which ~~he died~~ the death occurred, the county paying ~~such~~ the funeral expenses shall be
2 reimbursed by the county in which the decedent had an established residency. ~~When the person~~
3 ~~so dying shall be~~ If the decedent was an honorably discharged United States soldier, sailor,
4 marine, or aviator, the funeral shall be conducted and expenses paid as provided in chapter 33-
5 19.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

634L0716

SENATE COMMERCE COMMITTEE ENGROSSED NO.

SB 163 - 02/08/2005

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Dempster, Broderick, Earley, McCracken, and Schoenbeck and
Representatives Vehle, Murschel, O'Brien, and Peters

1 FOR AN ACT ENTITLED, An Act to authorize certain multiple employer trusts.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 58-18B be amended by adding thereto a NEW SECTION to read as
4 follows:

5 The rating requirements of this chapter do not apply to an association if all of the following
6 criteria are met:

7 (1) The trade, industry, or professional association is comprised in part of homogenous
8 small employers, meets the requirements for the issuance of group health insurance
9 pursuant to § 58-18-3 and if applicable, § 58-18-4, has a constitution or bylaws, has
10 been organized under the laws of South Dakota and maintained in good faith for
11 purposes other than providing insurance for at least ten continuous years, and will
12 provide coverage to not fewer than five hundred employees by January 1, 2007;

13 (2) The group health plan provides coverage to association members' employees and
14 dependents on a community rated basis;



(3) The director, after consideration of the impact on the insurance-buying public, has determined that the arrangement is in the best interest of the public.

Section 2. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as follows:

A self-funded multiple employer trust, as defined in section 3 of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. §1002, paragraph 40, may be authorized by the director if the multiple employer trust meets all of the following conditions:

- (1) The multiple employer trust is administered by an authorized insurer or a licensed third-party administrator;
- (2) The multiple employer trust meets all of the requirements of section 1 of this Act;
- (3) The multiple employer trust is established by a homogenous trade, industry, or professional association of employers that has a constitution or bylaws, is organized under the laws of South Dakota and has been maintained in good faith for purposes other than providing insurance for at least ten continuous years;
- (4) The association sponsoring the multiple employer trust is engaged in substantial activity for its members other than sponsorship of an employer welfare benefit plan;
- (5) The association sponsoring the multiple employer trust is a nonprofit entity organized under applicable South Dakota law;
- (6) The multiple employer trust, upon authorization by the director, participates in the South Dakota Life and Health Insurance Guaranty Association pursuant to chapter 58-29C and is a member pursuant to subdivision 58-29C-48(12);
- (7) The multiple employer trust:
 - (a) Meets the capital and surplus requirements of § 58-6-23;
 - (b) Meets the risk based capital requirements of § 58-4-48;

- 1 (c) Is subject to the hazardous financial condition requirements of §§ 58-4-39 to
2 58-4-42, inclusive;
- 3 (d) Invests its assets pursuant to the requirements of chapters 58-26 and 58-27;
- 4 (e) Is subject to chapter 58-3 on the same basis as insurers;
- 5 (f) Is subject to the insurers supervision, rehabilitation, and liquidation provisions
6 of chapter 58-29B.

7 Section 3. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 The director shall promulgate rules, pursuant to chapter 1-26, pertaining to multiple
10 employer trusts in the following areas:

- 11 (1) Consumer protection issues including minimum coverage standards for health
12 policies; claims processing and payment practices; resolution of consumer
13 complaints; compliance with federal HIPAA standards; plan termination processes
14 and managed care protections; financial and market conduct record keeping and
15 reporting; and unfair trade practices; and
- 16 (2) Financial and plan solvency issues including investment capital requirements; surplus
17 and deposit requirements; claims reserves, stop loss coverage, and standards for entry
18 and exit of plan members including a nonrefundable minimum deposit of not less
19 than two thousand five hundred dollars plus two percent of first year contributions
20 on an annual basis; and production of financial statements, audited financial
21 statements, and actuarial opinions.

22 Section 4. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 Except as otherwise provided in this Act, a multiple employer trust organized pursuant to

1 this Act may not be deemed to be or considered to be an insurance company or association of
2 any kind or character under Title 58, or subject to the provisions of §§ 58-8-6 to 58-8-19,
3 inclusive.

4 Section 5. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 A multiple employer trust authorized by this Act may have its authorization suspended or
7 revoked by the director for violating any provision of this Act or because its capital is impaired,
8 and in either instance the director may take action in lieu of suspension or revocation as though
9 the trust were an insurer as provided by § 58-4-28.1.

10 Section 6. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 If not otherwise provided, a multiple employer trust doing business in this state on a self-
13 funded basis shall pay premium taxes as required in chapter 10-44 based upon the amount each
14 participating employer contributes, including any amounts contributed by employees and
15 dependents, to the plan on an annual basis. If a multiple employer trust purchases excess or stop
16 loss coverage, the multiple employer trust may not be taxed additionally for that coverage.

17 Section 7. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 No agent may sell, solicit, or negotiate a self-funded multiple employer trust authorized by
20 this Act unless the agent is licensed to sell life and health insurance pursuant to chapter 58-30.

21 Section 8. That chapter 58-18 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 The provisions of this Act do not apply to any single employer self-funded plan as
24 preempted by Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1144 or any

- 1 arrangement exempted pursuant to § 1-24-17. A self-funded multiple employer trust authorized
- 2 by this Act may include as participating employers both small employers and large employers.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

690L0690

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 171** - 02/05/2005

Introduced by: Senators Schoenbeck and Sutton (Dan) and Representatives Murschel, McLaughlin, Roberts, and Valandra

1 FOR AN ACT ENTITLED, An Act to prohibit certain officials from voting if a conflict of
2 interest exists.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. No county, municipal, or school official may vote on any issue in which the
5 official has a conflict of interest. Each official shall decide if any potential conflict of interest
6 requires such official to be disqualified from voting. However, no such official may vote on an
7 issue if the following circumstances apply:

8 (1) The official has a direct pecuniary interest in the matter before the governing body;
9 or

10 (2) At least two-thirds of the governing body votes that an official has an identifiable
11 conflict of interest that should prohibit such official from voting on a specific matter.

12 If an official with a direct pecuniary interest votes on a matter before the governing body,
13 the legal sole remedy is to invalidate that official's vote.



State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

565L0732

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB 178** - 02/16/2005

Introduced by: Senators Schoenbeck and Gray and Representatives Murschel, Cutler, Faehn,
and Koistinen

1 FOR AN ACT ENTITLED, An Act to provide for the creation of county interdisciplinary child
2 information teams and to regulate their memberships, authority, and responsibilities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The following persons and agencies operating within a county may, by written
5 agreement, form a county interdisciplinary child information team:

6 (1) The state's attorney;

7 (2) The county sheriff;

8 (3) The chief of police of any municipality;

9 (4) The superintendent or the chief executive officer of any school district;

10 (5) The Department of Social Services;

11 (6) The Department of Corrections; and

12 (7) The administrator of the county teen court.

13 Section 2. The persons and agencies signing a written agreement to form a county
14 interdisciplinary child information team may, from time to time, by majority vote, allow the
15 following persons to sign the written agreement and join the team:



- (1) Any physician, psychologist, psychiatrist, nurse, or other provider of medical and mental health care;
- (2) Any administrator of any private elementary and secondary school;
- (3) Any attorney practicing law in the county; and
- (4) Any responsible person that has a legitimate interest in one or more of the children that the team is serving.

Section 3. The county interdisciplinary child information team may form one or more auxiliary teams for the purpose of providing service to a single child, a group of children, or specific children with a particular type of problem, or for any other purpose. Each auxiliary team is subject to the written agreement. Each member of an auxiliary team must be a person who has personal knowledge of or experience with some child serviced by the auxiliary team.

Section 4. The county interdisciplinary child information team and the written agreement shall facilitate the exchange and sharing of information that one or more team members may be able to use in serving a child in the course of their professions, specialties, interests, or occupations for the purpose of holding each child accountable, ensuring the safety of the child and the community, and providing early intervention to avert more serious problems. Information regarding any child that a team member supplies to other team members is confidential and may not be disseminated beyond the team.

Section 5. The terms of the written agreement shall provide for the rules under which the team will operate, the method by which information will be shared, distributed, and managed, the means by which the confidentiality of the information will be safeguarded, and any other matters necessary to the purpose and functions of the team. The terms of the written agreement shall also provide how the team will coordinate its efforts with child protection teams as provided in § 26-8A-17 and local interagency teams, if any, as provided in § 27A-15-54. The

1 written agreement shall be filed with the county auditor.

2 Section 6. To the extent that the county interdisciplinary child information team is involved
3 in a proceeding that is held prior to adjudication by a court, the team satisfies the requirements
4 of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974.
5 South Dakota school districts may release education records to the team. The terms of the
6 written agreement, as provided for in section 5 of this Act, shall include a requirement that the
7 officials and authorities to whom the information is disclosed certify in writing to the school
8 district that is releasing the education records that the education records or information from the
9 education records will not be disclosed to any other party without the prior written consent of
10 the parent or guardian of the student.

11 Section 7. Any person serving as a member of a county interdisciplinary child information
12 team as provided in section 1 of this Act whose action in facilitating the exchange and sharing
13 of information in serving any child in the course of their professions, specialties, interests, or
14 occupations for the purpose of holding each child accountable, ensuring the safety of the child
15 and the community, and providing early intervention to avert more serious problems, is immune
16 from any civil liability, arising out of any good faith act relevant to participation on any county
17 interdisciplinary child information team, that might otherwise be incurred or imposed.

18 Section 8. Any agreement pursuant to this Act shall include a requirement for notice to the
19 parent or guardian unless the parent or guardian is the subject of an investigation by one of the
20 participating agencies with respect to the child's conduct or welfare.

State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

453L0572

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 207** - 02/08/2005

Introduced by: Senators Apa, Greenfield, Hansen (Tom), Hundstad, Knudson, McNenny, and Napoli and Representatives Novstrup, Glover, Hargens, Weems, and Wick

1 FOR AN ACT ENTITLED, An Act to revise certain mobile and manufactured home provisions
2 related to taxation, fees, titling, and penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-45-2.1 be amended to read as follows:

5 10-45-2.1. Sales of sectional homes are subject to sales tax, which shall be based upon the
6 fair market value of the raw materials used to construct each home.

7 For the purpose of this section, "~~sectional homes~~" the term, sectional homes, means any
8 home pre-built in whole or in part for the purpose of permanent placement on a foundation.
9 Mobile homes as defined in subdivision 32-3-1(8) and manufactured homes as defined in
10 subdivision 32-3-1(6) are not sectional homes.

11 Section 2. That § 10-46-5.1 be amended to read as follows:

12 10-46-5.1. If a sectional home is permanently affixed to real property, it is not a vehicle
13 subject to registration under chapter 32-3, and shall be classified as real property. A contractor
14 who erects such a home shall hold a sales tax or use tax license and pay use tax based upon the
15 fair market value of the raw materials used to construct and erect the home.



For the purpose of this section, the term, sectional home, means any home pre-built in part or in whole for the purpose of permanent placement on a foundation. ~~A mobile home~~ Mobile homes as defined by subdivision 32-3-1(8) and manufactured homes as defined in subdivision 32-3-1(6) ~~is~~ are not a sectional ~~home~~ homes.

Section 3. That § 32-5-16.1 be amended to read as follows:

32-5-16.1. In addition to any other license fees, registration fees, and compensation for the use of the highways, the registrant shall pay to the county treasurer upon application for the ~~first~~ or original initial registration of a mobile home or manufactured home in this state, an additional license fee at the rate of ~~three~~ four percent of the purchase price of ~~such~~ the mobile home or manufactured home. ~~Purchase~~ The purchase price shall be established by a bill of sale. However, if a bill of sale is not available, the retail book value shall be used to establish the purchase price. The retail value ~~shall be~~ is the value in a nationally recognized dealer's guide adopted by the secretary. ~~The secretary shall file notice of adoption of the guide with the secretary of state. Such adoption and filing is not subject to chapter 1-26. The payment of such license fee shall be in full and in lieu of all occupational, sales, excise, privilege, and franchise taxes levied by this state upon the gross receipts from all sales of mobile homes. The governmental or public entities set forth in §§ 32-5-42 and 32-5-42.1, are exempted from the initial registration imposed by this section. The payment of the initial registration fee is in lieu of the tax imposed pursuant to chapters 10-45, 10-46, and 10-46A, and all other occupational, sales, excise, privilege, and franchise taxes levied by this state upon the gross receipts from the sale or installation of mobile or manufactured homes. The governmental or public entities set forth in §§ 32-5-42 and 32-5-42.1 are exempted from the initial registration imposed by this section.~~

Section 4. That § 32-5-16.2 be amended to read as follows:

1 32-5-16.2. ~~Fifteen~~ Eleven and one-fourth percent of the ~~license~~ four percent initial
2 registration fee prescribed by § 32-5-16.1 shall be deposited in the state motor vehicle fund to
3 defray costs of titling, registration, and for unusual use of the highway. ~~The remaining~~
4 ~~eighty-five~~ Sixty-three and three-fourths percent shall be distributed to the county highway and
5 bridge fund in the county where the mobile or manufactured home is registered. The remaining
6 twenty-five percent shall be distributed to the state general fund.

7 Section 5. That § 32-5-16.3 be amended to read as follows:

8 32-5-16.3. Any person who moves a mobile home or manufactured home shall obtain a
9 permit, as prescribed by the secretary of revenue and regulation , from the county treasurer
10 where the home is located. The permit ~~fee~~ is valid for a single trip from the point of origin to
11 a point of destination within the state. Before the county treasurer may issue a permit, the owner
12 of the mobile home or manufactured home or regulated lender as defined in § 54-3-14 that is
13 repossessing the mobile home or manufactured home shall obtain an affidavit, as prescribed by
14 the secretary of revenue and regulation , from the county treasurer stating that the current year's
15 taxes are paid as described in §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3. The permit fee
16 for mobile homes and manufactured homes for use on the public highways is fifteen dollars. The
17 fees collected shall be credited to the license plate special revenue fund. The fee and permit
18 imposed by this section does not apply to a new or used mobile home or manufactured home
19 owned and transported by or for a dealer licensed under chapter 32-7A. A violation of this
20 section is a Class 2 misdemeanor. A dealer shall obtain from the department self-issued permits
21 and shall display a self-issued permit when moving a used or new mobile or manufactured
22 home.

23 Section 6. That § 32-5-16.4 be repealed.

24 ~~32-5-16.4. Any transport of a used mobile home or manufactured home by a transporter shall~~

1 ~~be accompanied with a notification form, as prescribed by the secretary of revenue and~~
2 ~~regulation, stating the point of origin and the point of destination. The transporter shall provide~~
3 ~~a copy of the notification form to the director of equalization in the county of origin and the~~
4 ~~county of destination. This section does not apply to any transport regulated under chapter 32-~~
5 ~~7A. A violation of this section is a Class 2 misdemeanor.~~

6 Section 7. That § 32-5-16.5 be repealed.

7 ~~— 32-5-16.5. Any transport of a used mobile home or manufactured home by a transporter shall~~
8 ~~be accompanied with an affidavit from the county treasurer of the county in which the used~~
9 ~~mobile home or manufactured home is registered, stating that the current year's taxes are paid~~
10 ~~as described in §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3. This section does not apply to~~
11 ~~any transport regulated under chapter 32-7A. A violation of this section is a Class 2~~
12 ~~misdemeanor.~~

13 Section 8. That § 32-5-16.6 be amended to read as follows:

14 32-5-16.6. If the owner of the used mobile home or manufactured home, prior to moving the
15 home, fails to obtain an affidavit from the county treasurer of the county in which the used
16 mobile home or manufactured home is registered, stating that the current year's taxes are paid
17 as described in §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the ~~court~~ department shall
18 assess a ~~civil~~ monetary penalty on the owner. If a regulated lender, as defined in § 54-3-14, is
19 repossessing a used mobile home or manufactured home and fails to obtain an affidavit, prior
20 to moving the home, from the county treasurer of the county in which the used mobile home or
21 manufactured home is registered, stating that the current year's taxes are paid as described in
22 §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the ~~court~~ department shall assess a ~~civil~~
23 monetary penalty on the lender. The ~~court~~ department shall levy a ~~civil~~ monetary penalty of two
24 hundred fifty dollars for the first violation within a one-year period, five hundred dollars for the

1 second violation within a one-year period, and one thousand dollars for each subsequent
2 violation within a one-year period. All ~~civil~~ monetary penalties collected pursuant to this section
3 shall be deposited in the ~~county general fund of the county in which the used mobile home or~~
4 ~~manufactured home is registered~~ motor vehicle fund. The county treasurer shall notify the
5 Department of Revenue and Regulation in writing of any violation ~~resulting in a civil penalty~~
6 ~~assessment~~ for failure to obtain a tax affidavit prior to moving a mobile or manufactured home.

7 Section 9. That § 32-5-16.7 be amended to read as follows:

8 32-5-16.7. If a transporter of a used mobile home or manufactured home, prior to
9 transporting, fails to obtain an affidavit from the county treasurer of the county in which the
10 used mobile home or manufactured home is registered, stating that the current year's taxes are
11 paid as described in §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the ~~court~~ department shall
12 assess a ~~civil~~ monetary penalty on the transport owner. If a manufacturer or licensed dealer, as
13 defined in chapter 32-7A, is moving, repossessing, trading, purchasing, or receiving onto the
14 manufacturer's or licensed dealer's lot a used mobile home or manufactured home and fails to
15 obtain an affidavit from the county treasurer of the county in which the used mobile home or
16 manufactured home is registered, stating that the current year's taxes are paid as described in
17 §§ 10-21-36 to 10-21-39, inclusive, or § 10-9-3, the ~~court~~ department shall assess a ~~civil~~
18 monetary penalty on the manufacturer or licensed dealer. The transporter or dealer who was
19 responsible for moving the mobile or manufactured home is liable for any property taxes due
20 the county.

21 The ~~court~~ department shall levy a ~~civil~~ monetary penalty of two hundred fifty dollars for the
22 first violation within a one-year period, five hundred dollars for the second violation within a
23 one-year period, and one thousand dollars for each subsequent violation within a one-year
24 period. All ~~civil~~ monetary penalties collected pursuant to this section shall be deposited in the

1 ~~county general fund of the county in which the used mobile home or manufactured home is~~
2 ~~registered~~ motor vehicle fund. The county treasurer shall notify the Department of Revenue and
3 Regulation in writing of any violation ~~resulting in a civil penalty assessment~~ for failure to obtain
4 a tax affidavit prior to moving a mobile or manufactured home.

5 Section 10. That § 32-5-16.8 be amended to read as follows:

6 32-5-16.8. For the purposes of §§ 32-5-16.6 and 32-5-16.7, if the owner, lender, licensed
7 dealer, or transporter are the same party the ~~court~~ department may not assess multiple ~~civil~~
8 monetary penalties for any one violation.

9 Section 11. That § 32-9-57 be amended to read as follows:

10 32-9-57. Any commercial motor carrier located in the state hauling a new trailer ~~or a new~~
11 ~~or used manufactured or mobile home~~ with a manufacturer's statement of origin or certificate
12 of title and who has registered with the Department of Revenue and Regulation as a transporter
13 may use a transporter plate upon the streets and highways for in-transit purposes. The fee for
14 a transporter plate is fifty dollars and the fee shall be deposited in the license plate special
15 revenue fund. Any new trailer with a transporter plate may be used to haul other new trailers.
16 No transporter may use a transporter plate for any other purpose. A violation of this section is
17 a Class 1 misdemeanor.

18 Section 12. That § 32-9-57.1 be amended to read as follows:

19 32-9-57.1. The department may, pursuant to chapter 1-26, revoke or suspend the transporter
20 plate issued pursuant § 32-9-57 which belongs to any transporter ~~who the court has assessed a~~
21 ~~civil penalty pursuant to § 32-5-16.7 four or more times within a one-year period~~. It is a Class
22 1 misdemeanor for any transporter to fail or refuse to surrender to the department upon its
23 lawful demand any transporter plate which has been revoked or suspended.

24 Section 13. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Any person against whom a penalty is assessed pursuant to section 8 or 9 of this Act may
3 request a hearing before the secretary if the person believes that the assessment is based upon
4 a mistake of fact or an error of law. A request for hearing shall be made in writing within twenty
5 days from the date of the assessment and shall contain a statement indicating the mistake of fact
6 or error of law the person believes resulted in an invalid assessment. Amended or additional
7 statements of facts or errors of law may be made not less than fourteen days prior to the hearing
8 if the hearing examiner determines such additional or amended statements are in the interest of
9 justice and do not prejudice either party. Hearings are conducted and appeals taken pursuant to
10 the provisions of chapters 1-26 and 1-26D.

11 A copy of the hearing examiner's proposed decision, findings of fact and conclusions of law
12 shall be served on all parties when furnished to the secretary. If the secretary, pursuant to chapter
13 1-26D, accepts the final decision of the hearing examiner, no appeal from a final decision of the
14 secretary upon an assessment may be taken unless any amount ordered paid by the secretary is
15 paid or a bond filed to insure payment of such amount. However, if the final decision of the
16 secretary, pursuant to chapter 1-26D, rejects or modifies the decision of the hearing examiner
17 regarding the amount due on the assessment, an appeal may be taken without payment of the
18 amount ordered to be paid and without filing of a bond. If the secretary's decision is affirmed
19 by the circuit court, no appeal may be taken unless any amount ordered to be paid by the
20 secretary is paid or a bond is filed to insure payment of such amount.

21 Section 14. That § 32-7A-11 be amended to read as follows:

22 32-7A-11. New and used mobile homes and manufactured homes owned by a dealer may
23 be transported upon the streets and highways to the dealer's place of business and to the
24 purchaser of such a home and between a dealer's place of business and a supplemental lot or a

1 temporary supplemental lot. ~~Any mobile home or manufactured home purchased or transported~~
2 ~~by or for a dealer shall be accompanied with a notification form stating the point of origin. The~~
3 ~~dealer shall provide a copy of the notification form to the director of equalization in the county~~
4 ~~of origin.~~

5 Section 15. That chapter 32-3 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 An owner of a mobile or manufactured home fixed to real property owned by the applicant
8 may request that the title to the home be surrendered if a title has been issued in accordance with
9 § 32-3-3.1 and payment of the initial registration fee has been made in accordance with § 32-5-
10 16.1. A request shall be submitted on forms prescribed by the secretary. If the application and
11 the request to surrender the statement of ownership are submitted simultaneously, the
12 department shall only create an electronic record indicating ownership of the home and may not
13 issue a paper title. The department may not notate any liens on a title if a paper title is not
14 issued.

15 Section 16. That chapter 32-3 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 An owner of a mobile or manufactured home may choose to obtain a title on a mobile or
18 manufactured home whose title was surrendered. Before the mobile or manufactured home is
19 removed from real property, the owner shall submit to the department a current tax affidavit
20 from the county treasurer in which the mobile or manufactured home was located and an
21 affidavit stating that the home is no longer subject to a real property mortgage or any other liens.
22 The owner shall also furnish the department an independent report that lists the legal description
23 of the real estate upon which the mobile or manufactured home is located, any liens or
24 encumbrances against the mobile or manufactured home or the real estate upon which the

1 mobile or manufactured home is located, and the current owner of the mobile or manufactured
2 home. The independent report shall also contain an affidavit stating a lien search was conducted
3 of all records of the register of deeds, clerk of courts, the treasurer in the county where the
4 mobile or manufactured home is located, and the secretary of state and shall describe any liens
5 revealed by that search. If any liens or encumbrances exist against the mobile or manufactured
6 home, the applicant shall obtain a release from each lienholder prior to issuance of a title. The
7 department is not responsible for any mistakes in the issuance of the title resulting from
8 documents provided pursuant to this section.

State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

275L0655

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB 217** - 02/18/2005

Introduced by: Senator Knudson and Representative Cutler

1 FOR AN ACT ENTITLED, An Act to revise certain cross references in the code with regard
2 to the implementation of the South Dakota Business Corporation Act and to provide for an
3 exception to the repealers.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 36-21A-55 be amended to read as follows:

6 36-21A-55. The holding of a license issued under the provisions of this chapter or
7 participating in a transaction for which a license is required by this chapter is the transaction of
8 business within the state, and a nonresident licensee or unlicensed person so defined is subject
9 to the personal jurisdiction of the courts of this state as provided by § 15-7-2.

10 Service of process shall be made upon corporate licensees as provided by §§ ~~47-2-32 to 47-~~
11 ~~2-35, inclusive~~ section 52 of Senate Bill 70 previously enacted by the 2005 Legislature, and
12 § 47-8-15 to 47-8-18, inclusive section 362 of Senate Bill 70 previously enacted by the 2005
13 Legislature, and otherwise as provided by chapter 15-6.

14 Any person licensed under this chapter shall deliver a copy of any process or pleading to
15 which that licensee is a party to the executive director of the commission within ten days of its



1 being served by or upon him. Failure to file with the executive director is not jurisdictional in
2 any action to which a licensee under this chapter may be a party.

3 Section 2. That § 37-28-1 be amended to read as follows:

4 37-28-1. Terms used in this chapter, unless the context otherwise plainly requires, mean:

5 (1) "Act of Congress," the Act of Congress approved June 18, 1934, entitled an act to
6 provide for the establishment, operation and maintenance of foreign trade zones in
7 ports of entry of the United States, to expedite and encourage foreign commerce, and
8 for other purposes, as amended, and commonly known as the Foreign Trade Zones
9 Act of 1934;

10 (2) "Private corporation," a corporation organized under ~~chapter 47-2~~ sections 1 to 193,
11 inclusive, sections 235 to 247, inclusive, and sections 272 to 279, inclusive, of Senate
12 Bill 70 previously enacted by the 2005 Legislature, one of the purposes of which is
13 to establish, operate and maintain a foreign trade zone by itself or in conjunction with
14 a public corporation;

15 (3) "Public corporation," this state; a political subdivision of this state; any municipality
16 therein; any public agency of the state, of any public subdivision in the state or of any
17 municipality in the state; or any other corporate instrumentality of this state.

18 Section 3. That § 47-10-24 be amended to read as follows:

19 47-10-24. The provisions of ~~chapters 47-2 to 47-5~~ sections 1 to 193, inclusive, 47-7 sections
20 308 to 346, inclusive, and 47-9 sections 371 to 389, inclusive, of Senate Bill 70 previously
21 enacted by the 2005 Legislature shall apply to corporations incorporated under this chapter,
22 insofar as they may be applicable and not inconsistent with this chapter.

23 Section 4. That § 47-13A-1 be amended to read as follows:

24 47-13A-1. One or more lawyers licensed pursuant to chapter 16-16 may form professional

1 service corporations for the practice of law under ~~chapters 47-2 to 47-9, inclusive~~ sections 1 to
2 193, inclusive, sections 308 to 346, inclusive, and sections 371 to 389, inclusive, of Senate Bill
3 70 previously enacted by the 2005 Legislature, or may form limited liability companies under
4 the South Dakota Limited Liability Company Act, providing that such corporations and limited
5 liability companies are organized and operated in accordance with the provisions of this chapter.
6 In any corporation formed under this chapter one or more persons may act as the sole
7 stockholders, directors or officers of such corporation. However, any limited liability company
8 formed under this chapter shall comply with the South Dakota Limited Liability Act, as
9 amended.

10 Section 5. That § 47-20-13 be amended to read as follows:

11 47-20-13. The secretary of state shall charge and collect the fees provided by ~~§ 47-9-7 and~~
12 ~~any amendments that may be made thereto~~, sections 7 and 8 of Senate Bill 70 previously enacted
13 by the 2005 Legislature, for filing the instruments and issuing the certificates relating to
14 domestic corporations therein provided. The fees applicable to amended articles of incorporation
15 shall apply to restated articles of incorporation and fees applicable to the articles of
16 incorporation shall apply to articles of merger or consolidation.

17 Section 6. That § 47-20-14 be amended to read as follows:

18 47-20-14. The secretary of state shall charge and collect the fees provided by ~~chapter 47-9~~
19 ~~and any amendments that may be made thereto~~ sections 7 and 8 of Senate Bill 70 previously
20 enacted by the 2005 Legislature for filing instruments and issuing certificates relating to foreign
21 corporations.

22 Section 7. That § 47-33-3 be amended to read as follows:

23 47-33-3. (1) Terms used in this chapter mean:

24 (a) "Acquiring person," a person that makes or proposes to make a control share

1 acquisition. If two or more persons act as a partnership, limited partnership, syndicate
2 or other group pursuant to any written or unwritten agreement, arrangement,
3 relationship, understanding or otherwise, for the purposes of acquiring, owning or
4 voting shares of a domestic public corporation, all members of the partnership,
5 syndicate or other group constitute a "person." "Acquiring person" does not include:

6 (i) A licensed broker/dealer or licensed underwriter who

7 (A) Purchases shares of a domestic public corporation solely for the
8 purposes of resale to the public; and

9 (B) Is not acting in concert with an acquiring person; or

10 (ii) A person who becomes entitled to exercise or direct the exercise of a new
11 range of voting power within any of the ranges specified in subdivision 47-33-
12 9(4) solely as a result of a repurchase of shares by, or recapitalization of, the
13 domestic public corporation or similar action unless:

14 (A) The repurchase, recapitalization or similar action was proposed by or
15 on behalf of, or pursuant to any written or unwritten agreement,
16 arrangement, relationship, understanding, or otherwise with, the person
17 or any affiliate or associate of the person; or

18 (B) The person thereafter acquires beneficial ownership, directly or
19 indirectly, of outstanding voting shares of the domestic public
20 corporation and, immediately after the acquisition, is entitled to
21 exercise or direct the exercise of the same or a higher range of voting
22 power under subdivision 47-33-9(4) as the person became entitled to
23 exercise as a result of the repurchase, recapitalization, or similar action;

24 (b) "Affiliate," a person that directly, or indirectly through one or more intermediaries,

1 controls, is controlled by, or is under common control with, a specified person;

2 (c) "Announcement date," if used in reference to any business combination, means the
3 date of the first public announcement of the final, definitive proposal for the business
4 combination;

5 (d) "Articles," the original or restated articles of incorporation and all amendments
6 thereto;

7 (e) "Associate," if used to indicate a relationship with any person, means any of the
8 following:

9 (i) Any corporation or organization of which the person is an officer or partner
10 or is, directly or indirectly, the beneficial owner of ten percent or more of any
11 class or series of its equity securities;

12 (ii) Any trust or other estate in which the person has a substantial beneficial
13 interest or as to which the person serves as trustee or in a similar fiduciary
14 capacity;

15 (iii) Any relative or spouse of the person, or any relative of the spouse residing in
16 the home of the person;

17 (f) "Beneficial owner," if used with respect to any equity security, means a person:

18 (i) That, individually or with or through any of its affiliates or associates,
19 beneficially owns an equity security, directly or indirectly;

20 (ii) That, individually with or through any of its affiliates or associates has:

21 (A) The right to acquire an equity security, whether that right is exercisable
22 immediately or only after the passage of time, pursuant to any
23 agreement, arrangement, relationship or understanding, whether written
24 or unwritten, or upon the exercise of conversion rights, exchange rights,

1 warrants or options, or otherwise. However, a person may not be
2 deemed the beneficial owner of shares tendered pursuant to a tender or
3 exchange offer made by that person or any of that person's affiliates or
4 associates until those tendered shares are accepted for purchase or
5 exchange; or

6 (B) The right to vote an equity security pursuant to any agreement,
7 arrangement, relationship or understanding, whether written or
8 unwritten. However, a person may not be deemed the beneficial owner
9 of any shares under this subparagraph if the agreement, arrangement,
10 relationship or understanding to vote the shares (1) arises solely from
11 a revocable proxy or consent given in response to a proxy or consent
12 solicitation made in accordance with the applicable rules and
13 regulations under the Exchange Act, and (2) is not then reportable on
14 a Schedule 13D under the Exchange Act or any comparable or
15 successor report; or

16 (iii) That has any agreement, arrangement, relationship or understanding, whether
17 written or unwritten, for the purpose of acquiring, holding, voting (except
18 voting under a revocable proxy or consent described in subparagraph (ii)(B)
19 of this subsection), or disposing of an equity security with any other person
20 that beneficially owns, or whose affiliates or associates beneficially own,
21 directly or indirectly, the equity security;

22 (g) "Board," the board of directors of a corporation;

23 (h) "Business combination," if used in reference to a domestic public corporation and
24 any interested shareholder of the domestic public corporation, means any of the

following:

(i) Any merger or consolidation of the domestic public corporation or any subsidiary of the domestic public corporation with:

(A) The interested shareholder; or

(B) Any other foreign or domestic corporation (whether or not itself an interested shareholder of the domestic public corporation) that is, or after the merger or consolidation would be, an affiliate or associate of the interested shareholder, but excluding (1) the merger of a wholly-owned subsidiary of the domestic public corporation into the domestic public corporation, (2) the merger of two or more wholly-owned subsidiaries of the domestic public corporation, or (3) the merger of a domestic or foreign corporation, other than an interested shareholder or an affiliate or associate of an interested shareholder, with a wholly-owned subsidiary of the domestic public corporation pursuant to which the surviving corporation, immediately after the merger, becomes a wholly-owned subsidiary of the domestic public corporation;

(ii) Any exchange, pursuant to a plan of exchange under the laws of this state or a comparable statute of any other state or jurisdiction, of shares of the domestic public corporation or any subsidiary of the domestic public corporation for equity securities of either (i) the interested shareholder; or (ii) any other domestic or foreign corporation, whether or not itself an interested shareholder of the domestic public corporation, that is, or after the exchange would be, an affiliate or associate of the interested shareholder;

(iii) Any sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in

one transaction or a series of transactions, to or with the interested shareholder or any affiliate or associate of the interested shareholder, of assets of the domestic public corporation or any subsidiary of the domestic public corporation to which any of the following applies;

(A) Having an aggregate market value equal to ten percent or more of the aggregate market value of all the assets, determined on a consolidated basis, of the domestic public corporation;

(B) Having an aggregate market value equal to ten percent or more of the aggregate market value of all the outstanding shares of the domestic public corporation; or

(C) Representing ten percent or more of the earning power or net income, determined on a consolidated basis, of the domestic public corporation;

(iv) The issuance or transfer by the domestic public corporation or any subsidiary of the domestic public corporation, in one transaction or a series of transactions, of any shares of the domestic public corporation or any subsidiary of the domestic public corporation that have an aggregate market value equal to five percent or more of the aggregate market value of all the outstanding shares of the domestic public corporation to the interested shareholder or any affiliate or associate of the interested shareholder, except pursuant to the exercise of rights or options to purchase shares offered, or a dividend or distribution paid or made, pro rata to all shareholders of the domestic public corporation other than for the purpose, directly or indirectly, of facilitating or effecting a subsequent transaction that would have been a business combination if the dividend or distribution had not been made;

- 1 (v) The adoption of any plan or proposal for the liquidation or dissolution of the
2 domestic public corporation, or any reincorporation of the domestic public
3 corporation in another state or jurisdiction, proposed by or on behalf of, or
4 pursuant to any written or unwritten agreement, arrangement, relationship,
5 understanding or otherwise with, the interested shareholder or any affiliate or
6 associate of the interested shareholder;
- 7 (vi) Any reclassification of securities, including any share dividend or split, reverse
8 share split, or other distribution of shares in respect of shares, any
9 recapitalization of the domestic public corporation, any merger or
10 consolidation of the domestic public corporation with any subsidiary of the
11 domestic public corporation, or any other transaction, whether or not with or
12 into or otherwise involving the interested shareholder, proposed by, on behalf
13 of, or pursuant to any written or unwritten agreement, arrangement,
14 relationship, understanding or otherwise with, the interested shareholder or
15 any affiliate or associate of the interested shareholder, that has the effect,
16 directly or indirectly, of increasing the proportionate amount of the
17 outstanding voting shares of any class or series, or securities that are
18 exchangeable for or convertible into, or carry the right to acquire voting
19 shares, of the domestic public corporation or any subsidiary of the domestic
20 public corporation that is, directly or indirectly, owned by the interested
21 shareholder or any affiliate or associate of the interested shareholder, except
22 as a result of immaterial changes due to fractional share adjustments; or
- 23 (vii) Any receipt by the interested shareholder or any affiliate or associate of the
24 interested shareholder of the benefit, directly or indirectly, except

1 proportionately as a shareholder of the domestic public corporation, of any
2 loans, advances, guarantees, pledges or other financial assistance, or any tax
3 credits or other tax advantages provided by or through the domestic public
4 corporation. However, the term "business combination" may not be deemed
5 to include the receipt of any of the foregoing benefits by that domestic public
6 corporation or any of that corporation's subsidiaries arising from transactions,
7 such as intercompany loans or tax sharing arrangements, between that
8 domestic public corporation and its subsidiaries in the ordinary course of
9 business;

10 (i) "Common shares," any shares other than preferred shares;

11 (j) "Consummation date," with respect to any business combination, the date of
12 consummation of the business combination or, in the case of a business combination
13 as to which a shareholder vote is taken, the later of:

14 (i) The business day before the vote; or

15 (ii) Twenty days before the date of consummation of business combination;

16 (k) "Control," including the terms "controlling," "controlled by," and "under common
17 control with," means the possession, directly or indirectly, of the power to direct or
18 cause the direction of the management and policies of a person, whether through the
19 ownership of voting shares, by contract, or otherwise. A person's beneficial
20 ownership of ten percent or more of the voting power of a corporation's outstanding
21 voting shares creates a presumption that the person has control of the corporation.
22 Notwithstanding the foregoing, a person is not considered to have control of a
23 corporation if the person holds voting shares, in good faith and not for the purpose
24 of circumventing this chapter, as an agent, bank, broker, nominee, custodian or

1 trustee for one or more beneficial owners who do not individually or as a group have
2 control of the corporation;

3 (l) "Control share acquisition," an acquisition, directly or indirectly, by an acquiring
4 person of beneficial ownership of shares of a domestic public corporation that, except
5 for § 47-33-8, would, if added to all other shares of the domestic public corporation
6 beneficially owned by the acquiring person, entitle the acquiring person, immediately
7 after the acquisition, to exercise or direct the exercise of a new range of voting power
8 within any of the ranges specified in subdivision 47-33-9(4) but does not include any
9 of the following:

10 (i) An acquisition before, or pursuant to a contract entered into before,
11 February 21, 1990;

12 (ii) An acquisition by a donee pursuant to an inter vivos gift not made to avoid
13 this chapter or by any person who acquires the shares of a decedent from the
14 representative of the decedent's estate other than as a creditor or purchaser; or

15 (iii) An acquisition pursuant to the satisfaction of a pledge or other security interest
16 created in good faith and not for the purpose of circumventing this chapter;

17 (iv) An acquisition pursuant to a merger, consolidation or share exchange effected
18 under ~~chapter 47-6~~ sections 248 to 271, inclusive, of Senate Bill 70 previously
19 enacted by the 2005 Legislature, if the domestic public corporation is a party
20 to the transaction;

21 (v) An acquisition for the benefit of others by a person acting in good faith and
22 not made to avoid this chapter, to the extent that the person may not exercise
23 or direct the exercise of the voting power or disposition of the shares except
24 upon the instruction of others;

(vi) The acquisition of shares of a domestic public corporation, in good faith, and not for the purpose of circumventing this chapter, by or from any person whose voting rights had previously been authorized by shareholders in compliance with this chapter, or any person whose previous acquisition of shares of a domestic public corporation would have constituted a control share acquisition but for one or more of the exceptions stated in subparagraphs (i) through (v) of this definition, unless the acquisition entitles the acquiring person, directly or indirectly, alone or as part of a group, to exercise or direct the exercise of voting power of the domestic public corporation in the election of directors in excess of the range of voting power previously authorized by the shareholders pursuant to § 47-33-12.

All shares the beneficial ownership of which is acquired within a ninety-day period, and all shares the beneficial ownership of which is acquired pursuant to a plan to make a control share acquisition, shall be deemed to have been acquired in the same acquisition;

(m) "Corporation" and "domestic corporation," a corporation for profit incorporated under the laws of this state;

(n) "Domestic public corporation," a corporation organized under the laws of this state that is a publicly held corporation, has more than fifty shareholders, and which:

(i) Has either its principal place of business or its principal executive office located in this state, and owns or controls assets located in this state having a fair market value of at least one million dollars and has more than one hundred employees in this state; or

(ii) Has more than five percent of its shareholders resident in this state, has more

1 than five percent of its shares owned by residents in this state, or has more
2 than two hundred fifty shareholders resident in this state.

3 For the purpose of subparagraph (ii) of this subsection, the residence of each
4 shareholder is the address of the shareholder which appears on the records of the
5 domestic public corporation;

6 (o) "Equity security,":

7 (i) Any share or similar security, any certificate of interest, any participation in
8 any profit sharing agreement, any voting trust certificate, or any certificate of
9 deposit for an equity security; and

10 (ii) Any security convertible, with or without consideration, into an equity
11 security, or any warrant, call or other option or privilege of buying an equity
12 security without being bound to do so, or any other security carrying any right
13 to acquire, subscribe to, or purchase an equity security;

14 (p) "Exchange Act," the Securities Exchange Act of 1934, (48 Stat. 881, 15 U.S.C. § 78a
15 et seq.) as amended;

16 (q) "Interested shareholder," if used in reference to any domestic public corporation, any
17 person, other than the domestic public corporation or any subsidiary of the domestic
18 public corporation, that is either:

19 (i) The beneficial owner, directly or indirectly, of ten percent or more of the
20 outstanding voting shares of the domestic public corporation; or

21 (ii) Is an affiliate or associate of the domestic public corporation and at any time
22 within the four-year period immediately before the date in question was the
23 beneficial owner, directly or indirectly, of ten percent or more of the then
24 outstanding voting shares of the domestic public corporation;

1 For the purposes of determining whether a person is an interested shareholder, the
2 number of voting shares of the domestic public corporation considered to be
3 outstanding includes shares considered to be beneficially owned by the person
4 through the application of subsection (f) of this section, but does not include any
5 other unissued voting shares of the domestic public corporation which may be
6 issuable pursuant to any agreement, arrangement, or understanding, or upon the
7 exercise of rights, options, conversion rights, or otherwise;

8 (r) "Interested shares," the shares of a domestic public corporation owned by any of the
9 following persons:

- 10 (1) The acquiring person or its affiliates or associates;
11 (2) Any officer of the domestic public corporation; or
12 (3) Any employee of the domestic public corporation who is also a director of the
13 domestic public corporation;

14 (s) "Market value," if used in reference to shares or property of any domestic public
15 corporation, the following:

- 16 (i) In the case of shares, the highest closing sale price of a share during the
17 thirty-day period immediately preceding the date in question on the composite
18 tape for New York Stock Exchange listed shares, or, if the shares are not
19 quoted on the composite tape or not listed on the New York Stock Exchange,
20 on the principal United States securities exchange registered under the
21 Exchange Act on which the shares are listed, or, if the shares are not listed on
22 any such exchange, the highest closing bid quotation with respect to a share
23 during the thirty-day period preceding the date in question on the National
24 Association of Securities Dealers, Inc. Automated Quotations System or any

1 system then in use, or if no such quotations are available, the fair market value
2 on the date in question of a share as determined by the board of the domestic
3 public corporation in good faith; and

4 (ii) In the case of property other than cash or shares, the fair market value of the
5 property on the date in question as determined in good faith by the board of
6 the domestic public corporation;

7 (t) "Person," an individual, corporation, limited liability company, partnership,
8 unincorporated association, organization or other entity;

9 (u) "Preferred shares," any class or series of shares of a domestic public corporation that
10 under the bylaws or articles of incorporation of the domestic public corporation:

11 (i) Is entitled to receive payment of dividends before any payment of dividends
12 on some other class or series of shares; or

13 (ii) Is entitled in the event of any voluntary liquidation, dissolution or winding up
14 of the corporation to receive payment or distribution of a preferential amount
15 before any payments or distributions are received by some other class or series
16 of shares;

17 (v) "Publicly held corporation," a corporation that has a class of equity securities
18 registered pursuant to § 12 of the Exchange Act, or subject to § 15(d) of the
19 Exchange Act;

20 (w) "Share," one of the units, however designated, into which the shareholders'
21 proprietary interests in the corporation are divided;

22 (x) "Share acquisition date," with respect to any person and any domestic public
23 corporation, the date that the person first becomes an interested shareholder of the
24 domestic public corporation;

- 1 (y) "Shareholder," one who is a holder of record of shares in a corporation;
- 2 (z) "Subsidiary," of a specified corporation, any other corporation of which a majority
- 3 of the outstanding voting shares entitled to be cast is owned, directly or indirectly, by
- 4 the specified corporation;
- 5 (aa) "Voting shares," shares of a corporation entitled to vote generally in the election of
- 6 directors;
- 7 (2) ~~In this chapter the following have the meanings defined in § 47-2-1~~ Terms in this chapter
- 8 mean:
- 9 (a) "Board," the board of directors of a corporation;
- 10 (b) "Class," if used with reference to shares, means a category of shares that differs in
- 11 designation or one or more rights or preferences from another category of shares of
- 12 the corporation;
- 13 (c) "Director," a member of the board;
- 14 (d) "Good faith," honesty in fact in the conduct of the act or transaction concerned;
- 15 (e) "Intentionally," that the person referred to either has a purpose to do or fail to do the
- 16 act or cause the result specified or believes that the act or failure to act, if successful,
- 17 will cause that result. A person intentionally violates a statute if the person
- 18 intentionally does the act or causes the result prohibited by the statute, or if the
- 19 person intentionally fails to do the act or cause the result required by the statutes,
- 20 even though the person may not know of the existence or constitutionality of the
- 21 statute or the scope or meaning of the term used in the statute;
- 22 (f) "Knows," or has "knowledge," has actual knowledge of it. A person does not know
- 23 of a fact merely because the person has reason to know of the fact;
- 24 (g) "Notice," is given by a corporation to a person when mailed to the person at the last

1 known address of the person, when communicated to the person orally, when handed
2 to the person, when left at the office of the person with a clerk or other person in
3 charge of the office, or if there is no one in charge, when left in a conspicuous place
4 in the office, or if the office is closed or the person to be notified has no office, or
5 when left at the dwelling house or usual place of abode of the person with some
6 person of suitable age and discretion then residing therein. Notice is given to a
7 corporation when mailed or delivered to it at its registered office. Notice by mail is
8 given when deposited in the United States mail with sufficient postage affixed;

9 (h) "Officer," a person elected, appointed, authorized, or otherwise designated as an
10 officer by the board, and any other person considered elected as an officer;

11 (i) "Organization," a domestic or foreign corporation partnership, limited partnership,
12 joint venture, association, business trust, estate, trust, enterprise and any other legal
13 or commercial entity;

14 (j) "Outstanding shares," all shares duly issued and not reacquired by a corporation;

15 (k) "Series," a category of shares, within a class of shares authorized or issued by a
16 corporation by or pursuant to its articles, that have some of the same rights and
17 preferences as other shares within the same class, but that differ in designation or one
18 or more rights and preferences from another category of shares within that class.

19 Section 8. That § 47-9A-1 be amended to read as follows:

20 47-9A-1. The Legislature of the State of South Dakota recognizes the importance of the
21 family farm to the economic and moral stability of the state, and the Legislature recognizes that
22 the existence of the family farm is threatened by conglomerates in farming. Therefore, it is
23 hereby declared to be the public policy of this state, and shall be the provision of this chapter,
24 that, notwithstanding the provisions of ~~§ 47-2-3~~ section 37 of Senate Bill 70 previously enacted

1 by the 2005 Legislature, no foreign or domestic corporation, except as provided herein, shall be
2 formed or licensed under the South Dakota Business Corporation Act for the purpose of owning,
3 leasing, holding or otherwise controlling agricultural land to be used in the business of
4 agriculture.

5 It is further declared that no foreign or domestic limited liability company, except as
6 provided herein, shall be formed or licensed under the South Dakota Limited Liability Company
7 Act for the purpose of owning, leasing, holding or otherwise controlling agricultural land to be
8 used in the business of agriculture.

9 Section 9. That § 49-33-1 be amended to read as follows:

10 49-33-1. Any number of persons, not less than three, may form a corporation for the purpose
11 of constructing, maintaining and operating a street railway or railways or for the purpose of
12 generating, transmitting or distributing electricity, the same to be sold to or used by the public
13 for heat, light or power, by making and executing articles of incorporation in compliance with
14 § 47-2-5 sections 28 to 31, inclusive, and sections 74 to 76, inclusive, of Senate Bill 70
15 previously enacted by the 2005 Legislature. Such corporation shall exist perpetually unless
16 otherwise stated in its articles of incorporation and shall have the power to engage in other
17 businesses set forth therein.

18 Any corporation organized under chapter 49-33 may at any time restate its articles of
19 incorporation as theretofore amended by a resolution adopted by its board of directors. The
20 secretary of state shall accept the restated articles of incorporation for filing upon receipt of a
21 certified copy of said resolution.

22 Section 10. That § 49-33-23 be amended to read as follows:

23 49-33-23. Notwithstanding the provisions of ~~chapter 47-3~~ sections 53 to 85, inclusive, of
24 Senate Bill 70 previously enacted by the 2005 Legislature, a corporation, now or hereafter

1 formed under the provisions of this chapter may provide in its articles of incorporation, or in any
2 amendment thereof, for the issuance of preferred stock in series and authorize the board of
3 directors (within the limits, if any, prescribed in such articles of incorporation or amendment)
4 to fix certain or all of the characteristics and rights thereof.

5 Section 11. That § 49-33-30 be amended to read as follows:

6 49-33-30. Any corporation organized under chapter 49-33 may merge with any one or more
7 other corporations, domestic or foreign, into a single corporation, which may be any one of the
8 constituent corporations, or may consolidate with any such corporations into a new corporation
9 formed by the consolidation. Each of the constituent corporations shall enter into a plan of
10 merger or consolidation. Such plan shall, in the case of each corporation organized under this
11 chapter, first be approved by the board of directors of each such corporation and shall thereafter
12 be submitted to and approved by each such corporation by a vote of the stockholders holding
13 a majority, or such greater percentage as is provided in its articles of incorporation, of each class
14 of the corporation's outstanding stock entitled to vote thereon under the corporation's articles
15 of incorporation at an annual or special meeting of stockholders called by the board of directors
16 for the purpose of acting on the plan. Such consolidation or merger shall otherwise be in
17 conformance with and enjoy the benefits of ~~chapter 47-6~~ sections 248 to 271, inclusive, of
18 Senate Bill 70 previously enacted by the 2005 Legislature.

19 Section 12. That § 49-33-5.1 be amended to read as follows:

20 49-33-5.1. In addition to all provisions and powers in chapters 49-33 and 49-34 which are
21 applicable to corporations organized thereunder, all provisions and powers set forth in the South
22 Dakota Business Corporation Act, ~~chapters 47-2 to 47-9, inclusive~~ sections 1 to 193, inclusive,
23 sections 308 to 346, inclusive, and sections 371 to 389, inclusive, of Senate Bill 70 previously
24 enacted by the 2005 Legislature, applicable to domestic corporations are also applicable to

corporations which have been or will be organized under chapters 49-33 and 49-34 except if in conflict with the express provisions of chapters 49-33 and 49-34.

Section 13. That § 49-34-11 be amended to read as follows:

49-34-11. Any trust deed or mortgage executed by a corporation organized under the provisions of chapter 49-33 or qualified in accordance with the provisions of ~~chapter 47-8~~ sections 347 to 370, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature relative to the qualification of foreign corporations to transact business in this state, and carrying on a street railway, natural or artificial gas or electric public utility business shall be filed and recorded in the office of the secretary of state and such filing for record thereof shall create a lien upon such property, real and personal, from the time of such filing, and shall have the same effect, as to any property in this state described therein, as the record or filing of any similar instrument in the office of the register of deeds as to property in his county as if it were filed or recorded in each and every county in which any property therein described may be situated, and such filing and recording in the office of the secretary of state shall be the only recording or filing required. The deeds of trust or mortgages may by their terms include after-acquired real and personal property, and are as valid and effectual for that purpose as if this after-acquired property were owned by, and in possession of, the corporation giving the deed of trust or mortgage at the time of its execution.

Section 14. That § 49-34-11.1 be amended to read as follows:

49-34-11.1. As used in §§ 49-34-11.1 to 49-34-11.4, inclusive, the term "public utility" means a corporation, its lessees, its trustees and receivers, operating, maintaining or controlling in this state after July 1, 1967, equipment or facilities for the production, generation, transmission or distribution at retail of gas or electric service for the public and in the transmission and distribution using, or having a right to use, public roads, streets, alleys, or other

1 public ways for the purpose of constructing, using, operating or maintaining wires, pipes,
2 conduits or other facilities, which corporation is organized under the provisions of chapter 49-33
3 or is qualified in accordance with the provisions of ~~chapter 47-8~~ sections 347 to 370, inclusive,
4 of Senate Bill 70 previously enacted by the 2005 Legislature as a foreign corporation authorized
5 to transact business in this state.

6 Section 15. That § 5-19-3.2 be amended to read as follows:

7 5-19-3.2. The Bureau of Administration shall maintain a list of all foreign corporations
8 licensed pursuant to ~~chapter 47-8~~ sections 347 to 370, inclusive, of Senate Bill 70 previously
9 enacted by the 2005 Legislature which are not considered resident bidders under chapter 5-19.

10 Section 16. That § 5-19-4 be amended to read as follows:

11 5-19-4. "Resident," as used in this chapter means any person who has been a bona fide
12 resident of the state for one year or more immediately prior to bidding upon the contract; a
13 partnership or association the majority of the members of which have been bona fide residents
14 of the state for one year or more immediately prior to bidding upon the contract; a limited
15 liability company organized under the laws of this state; a foreign limited liability company
16 licensed to do business within this state pursuant to chapter ~~47-8~~ 47-34A; a corporation
17 organized under the laws of this state; a foreign corporation licensed to do business within this
18 state pursuant to ~~chapter 47-8~~ sections 347 to 370, inclusive, of Senate Bill 70 previously
19 enacted by the 2005 Legislature. All of the persons, partnerships, associations, limited liability
20 companies, foreign limited liability companies, corporations, and foreign corporations licensed
21 to do business within this state shall have maintained a substantial and bona fide place of
22 business and have conducted business therefrom within this state for at least one year prior to
23 the date on which a contract was awarded. A foreign corporation licensed pursuant to ~~chapter~~
24 ~~47-8~~ sections 347 to 370, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature

1 is not a resident as defined by this section if the state or country in which it is organized enforces
2 or has a preference for resident bidders.

3 Section 17. That § 51A-14-7 be amended to read as follows:

4 51A-14-7. The provisions of ~~§§ 47-6-23 to 47-6-23.3, inclusive, and §§ 47-6-40 to 47-6-50,~~
5 ~~inclusive,~~ sections 266 to 270, inclusive, and sections 281 to 307, inclusive, of Senate Bill 70
6 previously enacted by the 2005 Legislature apply when establishing the valuation of shares of
7 bank stock owned by dissident shareholders.

8 Section 18. That § 51A-15-44 be amended to read as follows:

9 51A-15-44. When the assets have been distributed in accordance with this chapter, the
10 director or receiver shall file an account with the circuit court. Upon approval thereof, the
11 director or receiver shall be relieved of liability in connection with the liquidation and the court
12 shall cancel the charter and enter an order of dissolution. The filing of a certified copy of such
13 order with the secretary of state shall be deemed authority for the issuance of a certificate of
14 dissolution ~~pursuant to § 47-7-24.~~

15 Section 19. That § 51A-15-9 be amended to read as follows:

16 51A-15-9. The director may require reports of the progress of a bank engaged in voluntary
17 liquidation and whenever he is satisfied that the liquidation has been properly completed he
18 shall cancel the charter and enter an order of dissolution. The filing of a certified copy of such
19 order with the secretary of state shall be deemed authority for the issuance of a certificate of
20 dissolution ~~pursuant to § 47-7-24.~~

21 Section 20. That § 51A-3-22 be amended to read as follows:

22 51A-3-22. A bank may amend its articles of incorporation in the manner provided under
23 ~~chapter 47-2~~ sections 1 to 193, inclusive, sections 235 to 247, inclusive, and sections 272 to
24 279, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature, upon amendment

1 certified by its president, except that prior approval of the director shall be required for a bank
2 to: change its name or location; acquire or abandon trust powers; change the number or par
3 value of its shares of stock; change the amount of capital; or, extend its corporate existence.
4 Such approval must be based upon a finding that the security of existing creditors will not be
5 impaired by the proposed action. All such amendments shall be filed in the same manner as
6 provided for original articles of incorporation.

7 Section 21. That § 51A-3-31 be amended to read as follows:

8 51A-3-31. A bank may indemnify by purchase of insurance or otherwise any current or
9 former officer, director, employee or agent, his heirs, executors and administrators and
10 successors in interest in the same manner and to the same extent as a business corporation may
11 indemnify, pursuant to the provisions of ~~chapter 47-2~~ sections 1 to 193, inclusive, sections 235,
12 to 247, inclusive, and sections 272 to 279, inclusive, of Senate Bill 70 previously enacted by the
13 2005 Legislature.

14 Section 22. That § 51A-5-9 be amended to read as follows:

15 51A-5-9. Before qualifying or serving in this state in any fiduciary capacity, as defined in
16 § 51A-5-8, the bank or trust company shall file in the Office of the Secretary of State of South
17 Dakota, a copy of its charter certified by its secretary under its corporate seal, and a power of
18 attorney designating the secretary of state or the secretary of state's successor in office as the
19 person upon whom all notices and processes issued by any court of this state may be served in
20 any action or proceeding relating to any trust, estate, or matter within this state in respect of
21 which the bank or trust company is acting in any fiduciary capacity with like effect as personal
22 service on the bank or trust company. The power of attorney is irrevocable so long as any
23 liability remains outstanding against the bank or trust company in this state. Service of process
24 under this section may be made in the manner provided in ~~§§ 47-8-15 to 47-8-19, inclusive~~

1 section 362 of Senate Bill 70 previously enacted by the 2005 Legislature.

2 Section 23. That § 51A-7-18 be amended to read as follows:

3 51A-7-18. A branch of an out-of-state bank may not be established in South Dakota unless
4 requisite filing fees have been paid and an application as prescribed by the commission has been
5 filed with the commission and after a hearing has been held before the commission pursuant to
6 § 51A-2-16. If the commission approves the application, the director shall issue a certificate of
7 authority after the applicant confirms in writing to the director that as long as it maintains a
8 branch in South Dakota, it will comply with all applicable laws of South Dakota and provides
9 satisfactory evidence to the director of compliance with the applicable laws of ~~§ 47-8-1~~ sections
10 347 and 351 of Senate Bill 70 previously enacted by the 2005 Legislature. An out-of-state state
11 bank which establishes and maintains a branch in South Dakota may conduct any activities at
12 the branch that are authorized under the laws of South Dakota for South Dakota state banks, and
13 has all rights and privileges permitted South Dakota state bank branches.

14 Section 24. That § 52-13-53 be amended to read as follows:

15 52-13-53. When the assets have been distributed in accordance with this chapter, the director
16 of the Division of Banking files an account with the circuit court. Upon approval thereof, the
17 director is relieved of liability in connection with the liquidation, and the court cancels the
18 charter and enters an order of dissolution. The filing of a certified copy of that order with the
19 secretary of state is considered authority for the issuance of a certificate of dissolution ~~pursuant~~
20 ~~to § 47-7-24.~~

21 Section 25. That § 58-27-62 be amended to read as follows:

22 58-27-62. In addition to investments excluded pursuant to other provisions of this title, an
23 insurer shall not invest in or lend its funds upon the security of any note or other evidence of
24 indebtedness secured by its own stock as collateral or other than as authorized by §§ 58-27-31,

1 58-27-36, and 58-27-37, either directly or indirectly, to any of its officers, directors, or affiliates,
2 except that it may make loans of the type described in §§ 58-27-32 to 58-27-40, inclusive, to
3 corporate affiliates, provided that no such loan or loans to an affiliate or affiliates, so made or
4 acquired, shall in the aggregate exceed forty percent of the surplus of the insurer, and no single
5 loan shall exceed twenty percent of such surplus. The real estate involved in any such loan to
6 an affiliate shall be worth at least double the amount loaned thereon, as justified by the appraisal
7 report of an independent, competent, and recognized appraiser or appraisers. The investments
8 authorized by this section may be made notwithstanding the provisions of ~~§ 47-5-18~~ sections
9 157 to 163, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature, to the
10 contrary and without liability on the part of the officers and directors specified therein.

11 Section 26. That § 58-35-61 be amended to read as follows:

12 58-35-61. Following the adoption of the resolution approving the plan of merger required
13 by § 58-35-60, a meeting of the policyholders of each of the corporations shall be held to vote
14 upon the proposed merger plan. Written notice of the meeting of the policyholders shall be
15 given to all policyholders, which may be either an annual or special meeting. Written notice
16 shall be given to each policyholder of record whether or not entitled to vote at the meeting, not
17 less than twenty days before the meeting, in the manner provided in ~~chapter 47-4~~ sections 86
18 to 135, inclusive, and sections 371 to 389, inclusive, of Senate Bill 70 previously enacted by the
19 2005 Legislature for the giving of notice of meetings of shareholders. Whether the meeting is
20 an annual or special meeting, the notice shall state that the purpose or one of the purposes of the
21 meeting is to consider the proposed plan of merger. A copy of the resolution passed by the board
22 of directors shall be included in or enclosed with the notice.

23 Section 27. That § 58-35-69 be amended to read as follows:

24 58-35-69. If a merger has been effected pursuant to §§ 58-35-60 to 58-35-74, inclusive:

- 1 (1) The several corporations to the plan of merger are a single corporation which is that
2 corporation designated in the plan of merger as the surviving corporation;
- 3 (2) The separate existence of all corporations parties to the plan of merger, except the
4 surviving or new corporation shall cease; and
- 5 (3) The surviving or new corporation has all the rights, privileges, immunities, and
6 powers and is subject to all the duties and liabilities of a corporation organized under
7 §§ 58-35-60 to 58-35-74, inclusive, and ~~chapter 47-2~~ sections 1 to 193, inclusive,
8 sections 235 to 247, inclusive, and sections 272 to 279, inclusive, of Senate Bill 70
9 previously enacted by the 2005 Legislature.

10 Section 28. That § 58-35-74 be amended to read as follows:

11 58-35-74. The provisions of ~~chapter 47-6~~ sections 248 to 271, inclusive, of Senate Bill 70
12 previously enacted by the 2005 Legislature regarding the rights of dissenting members and
13 proxy voting do not apply to mergers of farm mutual insurers pursuant to §§ 58-35-60 to 58-35-
14 74, inclusive.

15 Section 29. That § 58-37A-14 be amended to read as follows:

16 58-37A-14. A domestic society may consolidate or merge with any other society by
17 complying with the provisions of this section and the applicable provisions of ~~chapters 47-6 and~~
18 sections 248 to 271, inclusive, of Senate Bill 70 previously enacted by the 2005 Legislature and
19 chapter 58-5. It shall file with the director:

- 20 (1) A certified copy of the written contract containing in full the terms and conditions of
21 the consolidation or merger;
- 22 (2) A sworn statement by the president and secretary or corresponding officers of each
23 society showing the financial condition thereof on a date fixed by the director but not
24 earlier than December thirty-first, next preceding the date of the contract;

1 (3) A certificate of the officers, verified by their respective oaths, that the consolidation
2 or merger has been approved by a two-thirds vote of the supreme governing body of
3 each society, the vote being conducted at a regular or special meeting of each body,
4 or, if the society's laws permit, by mail; and

5 (4) Evidence that at least sixty days before the action of the supreme governing body of
6 each society, the text of the contract had been furnished to all members of each
7 society either by mail or by publication in full in the official publication of each
8 society.

9 If the director finds that the contract conforms to the provisions of this section, that the
10 financial statements are correct and that the consolidation or merger is just and equitable to the
11 members of each society, the director shall approve the contract and issue a certificate to that
12 effect. Upon approval, the contract shall be in effect unless any society which is a party to the
13 contract is incorporated under the laws of any other state or territory. The consolidation or
14 merger is not effective until it has been approved as provided by the laws of the other state or
15 territory and a certificate of approval filed with the director of insurance of this state or, if the
16 laws of the other state or territory contain no such provision, the consolidation or merger is not
17 effective until it has been approved by the director of the other state or territory and a certificate
18 of approval filed with the director of insurance of this state.

19 Upon the consolidation or merger becoming effective, all the rights, franchises, and interests
20 of the consolidated or merged societies in and to every species of property, real, personal, or
21 mixed, and things in action belonging to the consolidated or merged societies, shall be vested
22 in the society resulting from or remaining after the consolidation or merger without any other
23 instrument. However, conveyances of real property may be evidenced by proper deeds, and the
24 title to any real estate or interest in real estate, vested under the laws of this state in any of the

1 societies consolidated or merged, do not revert and are not impaired by reason of the
2 consolidation or merger, but shall vest in the society resulting from the consolidation or merger.

3 The affidavit of any officer of the society or of anyone authorized by it to mail any notice
4 or document, stating that the notice or document has been addressed and mailed, is prima facie
5 evidence that the notice or document has been furnished to the addressees.

6 Section 30. Notwithstanding the provisions of section 394 of Senate Bill 70, previously
7 enacted by the 2005 Legislature, subdivision 47-5-6(3) remains effective until July 1, 2007.